

EXHIBIT D-2

Exhibit B

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 SUMMIT MEDIA LLC, a)
5 California limited)
6 liability company,)
7)
8 Plaintiff,)
9)
10 VS.) CV 07-02649 RSWL (AJWx)
11)
12 CITY OF LOS ANGELES,)
13 a California charter)
14 city, and LOS ANGELES)
15 DEPARTMENT OF)
16 BUILDING AND SAFETY,)
17)
18 Defendants.)
19)
20 SUMMIT MEDIA LLC, a)
21 California limited)
22 liability corporation,)
23)
24 Plaintiff,)
25)
26 VS.)
27)
28 CBS OUTDOOR INC, a)
29 Delaware corporation;)
30 CLEAR CHANNEL OUTDOOR,)
31 INC., a Delaware)
32 corporation,)
33)
34 Defendants-Intervenors.)
35)
36
37 VIDEOTAPED DEPOSITION OF WILLIAM KUNZMAN
38
39 TAKEN ON
40
41 TUESDAY, JULY 22, 2008
42
43
44 Reported by: SHANDA LEVINE, CSR No. 10094
45

1 Videotaped deposition of WILLIAM KUNZMAN,
 2 taken on behalf of CBS OUTDOOR, INC., at 1800 Avenue
 3 of the Stars, Suite 900, Los Angeles, California,
 4 commencing at 10:18 a.m., Tuesday, July 22, 2008,
 5 before SHANDA LEVINE, CSR No. 10094.
 6
 7 APPEARANCES:
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 16 FOR CBS OUTDOOR, INC.:
 17 IRELL & MANELLA LLP
 18 BY: LAURA W. BRILL, ESQ.
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 21 Suite 900
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 23 (310) 277-1010
 24
 25

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1 APPEARANCES (CONTINUED)
 2
 3 FOR THE CITY OF LOS ANGELES AND THE LOS ANGELES
 4 DEPARTMENT OF BUILDING AND SAFETY:
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 6 OFFICE OF THE CITY ATTORNEY
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 13 (213) 978-8106
 14
 15 ALSO PRESENT: Jemal Judkins, Videographer
 16
 17
 18
 19
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1	LOS ANGELES, CALIFORNIA, TUESDAY, JULY 22, 2008	10:19:51	1	written to you in a letter was that we were studying	
2	10:18 A.M.	10:19:56	2	your contentions and that I thought it would be --	
10:17:46	3	10:20:00	3	if everybody -- if we reached an agreement that	
10:17:47	4	10:20:03	4	everybody pay their own expert fees, that would work	
10:17:48	5	10:20:05	5	out well, and I don't think you ever got back to me	
10:17:52	6	10:20:07	6	about that.	
10:17:56	7	10:20:08	7	Is that -- are you willing to agree that	
10:18:00	8	10:20:10	8	each side will pay their own expert witness fees?	
10:18:02	9	10:20:14	9	MR. MOBLEY: Not at this point because	
10:18:18	10	10:20:15	10	you're just -- you're examining this expert. At --	
10:19:24	11	10:20:22	11	at this point, I'm not prepared to agree to that.	
10:19:24	12	10:20:25	12	MS. BRILL: Okay. So we are reserving our	
10:19:24	13	10:20:29	13	rights that this is -- we don't have to -- we	
10:19:24	14	10:20:31	14	shouldn't be required to pay for this. And	
10:19:24	15	10:20:33	15	obviously if we do pay for this, it should be	
10:19:24	16	10:20:36	16	reciprocal in all cases.	
10:19:24	17	10:20:38	17	And that being said, I don't want to hold	
10:19:24	18	10:20:40	18	up the deposition, so I do have a check for	
10:19:24	19	10:20:42	19	Mr. Kunzman in the amount that you requested.	
10:19:24	20	10:20:44	20	MR. MOBLEY: Very well. Thank you.	
10:19:24	21	10:20:44	21	BY MS. BRILL:	
10:19:24	22	10:20:51	22	Q. Mr. Kunzman, could you say and spell your	
10:19:24	23	10:20:53	23	name for the record?	
10:19:24	24	10:20:54	24	A. Yes.	
10:19:25	25	10:20:54	25	William Kunzman, K-u-n-z-m-a-n.	
6			8		
10:19:25	1	Media.	10:20:58	1	Q. And you understand that you're under oath
10:19:25	2	THE VIDEOGRAPHER: The court reporter today	10:21:00	2	and have the obligation to tell the truth?
10:19:25	3	is Shanda Levine of Merrill Legal Solutions.	10:21:01	3	A. Yes.
10:19:25	4	Would the reporter please swear in the	10:21:02	4	Q. Have you been deposed before?
10:19:25	5	witness.	10:21:03	5	A. Yes.
6			10:21:04	6	Q. About how many times?
7			10:21:05	7	A. Probably about 50 times.
8			10:21:06	8	Q. Okay. And generally in connection with
9			10:21:09	9	what types of cases?
10			10:21:10	10	A. Primarily highway accidents, highway
10:19:25	11	THE VIDEOGRAPHER: Please begin.	10:21:14	11	accident cases.
10:19:25	12		10:21:15	12	Q. Have you ever been deposed -- well, strike
10:19:25	13	EXAMINATION	10:21:15	13	that.
10:19:25	14	BY MS. BRILL:	10:21:18	14	So you under- -- you understand generally
10:19:26	15	Q. Mr. Kunzman, good morning. We met just	10:21:20	15	the deposition process?
10:19:28	16	before we went on the record with the camera. My	10:21:21	16	A. Yes.
10:19:30	17	name is Laura Brill. I'm with Irell & Manella and I	10:21:22	17	Q. And in those traffic accident cases, you
10:19:34	18	represent CBS Outdoor.	10:21:24	18	were deposed as an expert witness generally?
10:19:36	19	MR. MOBLEY: Excuse -- excuse me, Counsel.	10:21:26	19	A. Yes.
10:19:37	20	Before we begin, I know we had discussions before	10:21:31	20	Q. So we can take -- just as probably has been
10:19:39	21	the deposition and you had taken the position that	10:21:35	21	done in your other depositions, we can take breaks
10:19:42	22	you were refusing to pay Mr. Kunzman his customary	10:21:37	22	here today.
10:19:45	23	expert fees for this deposition.	10:21:38	23	If you don't understand something that I'm
10:19:46	24	Have you reconsidered that position?	10:21:40	24	asking, ask for clarification. If you don't hear
10:19:48	25	MS. BRILL: We have -- are we -- what I had	10:21:43	25	the question, I'm happy to repeat it.
7				9	

10:21:45 1 We want your -- we don't want you to
 10:21:47 2 speculate or guess. You are here as an expert so
 10:21:50 3 you're -- we want to find out your opinions and the
 10:21:54 4 basis for your opinions.
 10:21:55 5 Do you understand all that?
 10:21:56 6 A. Yes.
 10:21:59 7 Q. Is there anything that would interfere with
 10:22:02 8 your ability to give truthful testimony today?
 10:22:04 9 A. No.
 10:22:05 10 Q. Mr. Kunzman, are you aware of a company
 10:22:07 11 called Summit Media?
 10:22:08 12 A. Yes.
 10:22:09 13 Q. What's your understanding about the nature
 10:22:10 14 of that company? ---
 10:22:13 15 A. They're in the -- in the sign business.
 10:22:14 16 That's about it. I don't know very much about the
 10:22:16 17 company.
 10:22:17 18 Q. Are you aware that there's a lawsuit in
 10:22:21 19 which Summit Media has sued the City of Los Angeles
 10:22:23 20 raising various constitutional challenges to the
 10:22:25 21 City's sign regulations?
 10:22:27 22 A. Yes.
 10:22:28 23 Q. When did you first hear of that case?
 10:22:32 24 A. Oh, I'm not sure. I believe near the end
 10:22:38 25 of last year in 2007, I believe this one was. May

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10:22:43 1 have been before that. 2 -- sometime in 2007.
 10:22:46 2 Q. And how did you first hear of the case?
 10:22:51 3 A. Paul Fisher called me and said he had a
 10:22:54 4 case. That's basically how I heard about it.
 10:22:58 5 Q. That's how you heard about the Summit case,
 10:23:00 6 from Paul Fisher, or are you talking about the
 10:23:04 7 Worldwide Rush case?
 10:23:05 8 A. I'm talking about that case. Actually, let
 10:23:08 9 me back up.
 10:23:10 10 The -- Gary Mobley called and just said
 10:23:12 11 there's a case coming, a case pending, yeah. And I
 10:23:15 12 don't know when that was. It's been several months.
 10:23:19 13 Q. Before you got a subpoena from me?
 10:23:21 14 A. Yes.
 10:23:25 15 Q. And did Mr. Mobley retain you at that time
 10:23:28 16 or did Summit Media retain you at that time?
 10:23:30 17 A. Not at that time.
 10:23:30 18 Q. When did -- are you now retained by Summit
 10:23:32 19 Media?
 10:23:32 20 A. Yes. Yes, I am.
 10:23:33 21 Q. One of the rules of the deposition I forgot
 10:23:35 22 to mention is we -- we each have to try not to talk
 10:23:37 23 over each other. So try and -- I'll try to wait for
 10:23:42 24 you to finish your answers. You try to wait for me
 10:23:46 25 to finish the questions. Okay?

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10:23:46 1 A. That's fine.
 10:23:49 2 Q. Okay. When did you become retained by
 10:23:49 3 Summit Media?
 10:23:53 4 A. Within the last -- during July of '08.
 10:24:04 5 Q. And is Mr. Mobley representing you here
 10:24:05 6 today?
 10:24:05 7 A. I guess that would be true, yes.
 10:24:07 8 Q. Do -- do you have a copy of your retention
 10:24:09 9 agreement with Mr. Mobley?
 10:24:10 10 A. Not -- well --
 10:24:11 11 Q. Or with Summit?
 10:24:13 12 A. I have a copy of -- at this point, it's
 10:24:17 13 just -- it's just a letter from him stating they
 10:24:22 14 wanted to retain me; basically.
 10:24:25 15 Q. And did you sign that agreement?
 10:24:27 16 A. No. Not --
 10:24:29 17 Q. But you're in the process of finalizing the
 10:24:31 18 terms of your retention?
 10:24:32 19 A. Yes.
 10:24:34 20 Q. How -- can I -- is that letter something
 10:24:37 21 that I can -- can I have this?
 10:24:41 22 MR. MOBLEY: I have no -- yeah, I have no
 10:24:41 23 objection to him producing that. I might indicate
 10:24:44 24 for the record that the witness located some
 10:24:50 25 additional documents that may come within the scope

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10:24:53 1 of your document request. I was not aware of those,
 10:24:55 2 but he's brought them here today.
 10:24:56 3 MS. BRILL: Okay. So we can -- we can get
 10:24:59 4 into that.
 10:25:01 5 Can we mark this as Exhibit 6, please.
 10:25:03 6 (The document referred to was
 10:25:03 7 marked for identification by the
 10:25:03 8 C.S.R. as Exhibit 6 and attached to
 10:25:15 9 this deposition.)
 10:25:15 10 BY MS. BRILL:
 10:25:16 11 Q. Mr. Kunzman, the letter we've just marked
 10:25:18 12 as Exhibit 6 is a three-page letter from Mr. Mobley
 10:25:22 13 to you dated July 15, 2008 and the "re:" line says
 10:25:27 14 "Summit Media versus City of Los Angeles" and it
 10:25:30 15 appears to set out the terms of your retention.
 10:25:30 16 Is that right?
 10:25:30 17 A. Yes.
 10:25:38 18 Q. And the letter sets out compensation that
 10:25:43 19 you would receive.
 10:25:43 20 Is that right?
 10:25:43 21 A. Yes.
 10:25:46 22 Q. And that -- is that compensation accurate
 10:25:49 23 for what Summit agreed to pay you for your time?
 10:25:56 24 MR. MOBLEY: Objection. It
 10:25:56 25 mischaracterizes the document. The agreement is not

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10:25:58 1 with Summit. It's on behalf of Summit, but it's not
 10:26:01 2 with Summit.
 10:26:01 3 BY MS. BRILL:
 10:26:03 4 Q. So is that -- is the compensation accurate
 10:26:06 5 for what Mr. Mobley agreed to pay you on behalf of
 10:26:09 6 Summit?
 10:26:09 7 A. Yes. That's a refundable deposit and
 10:26:13 8 it's -- it's -- so there may be additional funds
 10:26:16 9 required, so that's to start the case, yes.
 10:26:29 10 Q. And notwithstanding the fact that you
 10:26:32 11 haven't signed Exhibit 6 yet, you still consider
 10:26:35 12 yourself to be retained on behalf of Summit,
 10:26:35 13 correct?
 10:26:35 14 A. Yes.
 10:26:45 15 Q. Did you meet with anybody to prepare for
 10:26:47 16 your deposition today?
 10:26:48 17 A. I just talked with Gary for literally about
 10:26:51 18 five minutes down in the lobby today.
 10:26:53 19 Q. And no other preparation?
 10:26:56 20 A. Other than getting material, no.
 10:27:00 21 Q. Did you speak with anybody else about the
 10:27:02 22 fact that you were going to be deposed?
 10:27:03 23 A. No.
 10:27:14 24 Q. Did you, separately from meetings or -- or
 10:27:16 25 discussions, did you review any documents yourself

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10:27:19 1 in preparing for today?
 10:27:22 2 A. Only materials that I had produced. My
 10:27:25 3 materials.
 10:27:26 4 Q. And what -- what materials did you review?
 10:27:28 5 A. The -- oh, well, there's two -- there's a
 10:27:35 6 declaration which was -- it's dated August 30th,
 10:27:38 7 '04. I looked at that. Which is not -- doesn't
 10:27:41 8 have anything to do with this case in particular.
 10:27:43 9 And then I looked at my report dated
 10:27:48 10 December 21st, 2007, which I believe is -- is one
 10:27:54 11 that you've -- you looked at before. One you have.
 10:27:57 12 The -- the pictures I sent or you have a
 10:28:02 13 copy I believe on a CD, I -- I played those pictures
 10:28:06 14 out just to make sure I had a copy with me. And
 10:28:10 15 that's -- so those are the documents.
 10:28:14 16 There's -- that's your subpoena, of course.
 10:28:18 17 I looked at the -- the -- the motion for preliminary
 10:28:29 18 judge -- injunction. Document dated January 28th,
 10:28:32 19 2007. And I believe that date's wrong. I think
 10:28:35 20 it's 2008. I believe it is. I'm not sure, to be
 10:28:46 21 honest.
 10:28:46 22 Q. That's the -- I think that's the Worldwide
 10:28:46 23 Rush --
 10:28:46 24 A. Yes.
 10:28:49 25 Q. -- preliminary injunction motion, correct?

15

10:28:52 1 A. It seems to me it was this year, not last
 10:28:54 2 year. Six months ago versus 18 months ago. But I
 10:28:57 3 could be wrong.
 10:28:57 4 Q. I see. Okay.
 10:29:04 5 The -- the August 30th, 2004 document that
 10:29:07 6 you referred to, that was in the Metro Lights case?
 10:29:09 7 A. Yes.
 10:29:11 8 Q. And the December 21st, 2007 document, that
 10:29:15 9 was in the Worldwide Rush case?
 10:29:19 10 A. Yes.
 10:29:19 11 Q. And both of those -- the -- the Metro
 10:29:21 12 Lights case and Worldwide Rush were both lawsuits
 10:29:23 13 against the City of Los Angeles, correct?
 10:29:23 14 A. Yes.
 10:29:26 15 Q. Challenging certain aspects of the sign
 10:29:28 16 regulations?
 10:29:28 17 A. Yes.
 10:29:31 18 Q. Can I have those documents that you
 10:29:32 19 referred to?
 10:29:33 20 A. Sure.
 10:29:38 21 And there's one other document that I found
 10:29:40 22 which I referred to which is a -- a document
 10:29:44 23 prepared by Pamela Anderson called "An Independent
 10:29:47 24 Analysis of the Impact of Outdoor Advertising
 10:30:02 25 (Billboards) Upon Traffic" --

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10:30:02 1 THE REPORTER: "Advertising" what?
 10:29:47 2 THE WITNESS: "An Independent Analysis of
 10:30:00 3 the Impact of Outdoor Advertising (Billboards) Upon
 10:30:04 4 Traffic Safety."
 10:30:07 5 So that's what I have here.
 10:30:08 6 BY MS. BRILL:
 10:30:08 7 Q. Who is Pamela Anderson?
 10:30:09 8 A. She's a -- another consultant to -- I'm not
 10:30:12 9 sure. I can't characterize who she is, exactly.
 10:30:16 10 Q. Okay. Do -- you referred before to the
 10:30:22 11 subpoena that I sent you.
 10:30:25 12 A. Yes.
 10:30:25 13 Q. Did you do a thorough search of your
 10:30:29 14 documents to determine whether you had other
 10:30:29 15 documents that responded to the categories
 10:30:29 16 identified there?
 10:30:29 17 A. Yes. I looked -- I looked -- somehow the
 10:30:32 18 file itself is missing. I looked into my computer
 10:30:35 19 and I played off everything that's on the computer,
 10:30:38 20 which you already had; some of which you already
 10:30:42 21 had. And I went on and played off the 2004
 10:30:45 22 document, which you did not mention, but had to do
 10:30:49 23 with signs, so I thought well, I should -- I -- I
 10:30:52 24 suppose I could have put that in the subpoena, but
 10:30:55 25 brought it today just for -- in case you wanted to

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10:30:58 1 see it.
 10:30:59 2 Q. Okay.
 10:30:59 3 A. So --
 10:31:00 4 Q. And did you locate any of the underlying
 10:31:04 5 materials that you considered, either in preparing
 10:31:08 6 your December 21st, 2007 report or your August 30th,
 10:31:13 7 2004 report?
 10:31:14 8 MR. MOBLEY: I'll object that that's
 10:31:16 9 compound.
 10:31:17 10 You can go ahead and answer it.
 10:31:18 11 MS. BRILL: I'll -- I'll break it down.
 10:31:19 12 Q. Did you locate any of the underlying
 10:31:21 13 materials that you considered in preparing your
 10:31:24 14 December 21st, 2007 report?
 10:31:28 15 A. Yes. The --
 10:31:31 16 Q. Was that the photographs?
 10:31:31 17 A. Well, photographs, and the Pamela Anderson
 10:31:34 18 document there, which --
 10:31:37 19 Q. Okay.
 10:31:37 20 A. So that also.
 10:31:37 21 Q. And anything else?
 10:31:38 22 A. That's -- that's all I located, yeah.
 10:31:40 23 Q. And did you locate -- other than the
 10:31:42 24 photographs, did you locate any of the underlying
 10:31:44 25 materials that you considered in preparing your

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10:31:47 1 August 30th, 2004 report?
 10:31:49 2 A. There really isn't any. I mean, I -- I got
 10:31:53 3 an assignment and I did it. So there's not a --
 10:31:56 4 there's not underlying materials. There are none.
 10:31:59 5 Q. Okay. Were the photographs taken in
 10:32:01 6 connection with the 2004 report or the 2007 report?
 10:32:04 7 A. As I recall, they were primarily the 2004
 10:32:09 8 report, but there are some that I think ended up in
 10:32:12 9 the 2007 report and I'm not sure. I didn't dig
 10:32:14 10 through my files for that purpose.
 10:32:15 11 Q. Okay. Did you rely in part on your 2004
 10:32:19 12 report in preparing your 2007 report?
 10:32:21 13 A. Probably not. And the concepts are the
 10:32:25 14 same. You know, distraction and drivers driving and
 10:32:28 15 looking at signs. That -- those concepts are the
 10:32:31 16 same.
 10:32:32 17 But it isn't like I relied on the 2004
 10:32:36 18 report to prepare the 2007 report. No.
 10:32:38 19 Q. Okay. But the concept of driver
 10:32:42 20 distraction, the way you discuss it in the 2007 is
 10:32:44 21 the same as the way you were discussing it in 2004?
 10:32:47 22 MR. MOBLEY: I -- I'll object. Document
 10:32:48 23 speaks for itself.
 10:32:49 24 You can go ahead and answer.
 10:32:51 25 THE WITNESS: The -- the emphasis on the

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10:32:55 1 2004 report was city street signs, signs on the city
 10:32:59 2 streets.
 10:33:00 3 The 2007 document was more on freeway
 10:33:04 4 signs. The impact for freeway driver.
 10:33:07 5 So the -- the driver that was being
 10:33:08 6 addressed is different in both -- in those two
 10:33:11 7 cases. One is the city streets and one is the
 10:33:14 8 freeways.
 10:33:14 9 BY MS. BRILL:
 10:33:17 10 Q. But the concept -- you were using the
 10:33:18 11 concept of driver distraction the same in the two
 10:33:21 12 reports?
 10:33:22 13 A. Yeah, yeah. To some degree, yes.
 10:33:26 14 Q. Were you using them differently in the two
 10:33:29 15 reports?
 10:33:29 16 A. Well, there -- I -- I explored them
 10:33:30 17 differently. I -- the reports aren't exactly the
 10:33:36 18 same. They aren't -- they aren't on exact same
 10:33:38 19 principles and -- so there -- there's differences,
 10:33:44 20 yeah. The concept is the same.
 10:33:45 21 Q. The concept of driver distraction?
 10:33:47 22 A. Yeah.
 10:33:48 23 Q. And the definition of driver distraction,
 10:33:55 24 was it the same in both reports?
 10:33:56 25 A. I think so, yes. I -- yes, for sure. I'm

20

10:34:00 1 not even sure I used the word "driver distraction"
 10:34:02 2 in the 2004 report. I probably did. But --
 10:34:07 3 MS. BRILL: Okay. So let's just mark these
 10:34:09 4 documents.
 10:34:13 5 Exhibit 7 is a deposition notice
 10:34:21 6 rescheduling your deposition for today's date. And
 10:34:28 7 a letter to Mr. Mobley regarding that.
 10:34:28 8 (The document referred to was
 10:34:28 9 marked for identification by the
 10:34:28 10 C.S.R. as Exhibit 7 and attached to
 10:34:52 11 this deposition.)
 10:34:52 12 MS. BRILL: Exhibit 8 are --
 10:34:55 13 Q. Can you just verify Exhibit 8 are the
 10:34:58 14 photographs that you -- that you -- we've been
 10:35:00 15 mentioning before?
 10:35:01 16 A. Yes, they are.
 10:35:01 17 (The document referred to was
 10:35:01 18 marked for identification by the
 10:35:01 19 C.S.R. as Exhibit 8 and attached to
 10:35:01 20 this deposition.)
 10:35:01 21 THE REPORTER: Do you want me to mark the
 10:35:01 22 envelope, that manila folder or the --
 10:35:01 23 MS. BRILL: Why don't we use a clip and
 10:35:01 24 just mark the photographs.
 10:35:01 25 THE REPORTER: Okay.

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10:35:19 1 MS. BRILL: Goes with that folder.
 10:35:19 2 MR. BOSTROM: Can I ask for a
 10:35:20 3 clarification? Those photographs, are those for the
 10:35:22 4 2007 report or for the '04 report?
 10:35:26 5 THE WITNESS: Definitely for the '04
 10:35:27 6 report. And I think some of them for the '07 report
 10:35:30 7 also.
 10:35:30 8 MR. MOBLEY: May I see those photographs
 10:35:31 9 after you've marked them?
 10:35:42 10 MS. BRILL: Exhibit 10 is the letter from
 10:35:44 11 you to Mr. --
 10:35:45 12 THE REPORTER: 9.
 10:35:46 13 MS. BRILL: I'm sorry, 9. Do you want to
 10:35:48 14 take a minute?
 10:35:49 15 MR. MOBLEY: No, I just hate to make an
 10:35:51 16 objection, but I would like the court reporter to
 10:35:53 17 remark the -- the exhibit tag onto a more -- a less
 10:35:59 18 obtrusive part of the exhibit.
 10:36:00 19 THE REPORTER: Okay. Can I have it back?
 20 MR. MOBLEY: Sure.
 21 MS. BRILL: Where would you like it?
 22 MR. MOBLEY: Just --
 23 THE REPORTER: You want -- you want it
 24 here?
 25 MR. MOBLEY: How about the lower --

22

10:37:12 1 A. Yes.
 10:37:12 2 Q. Are there any opinions stated in that 2007
 10:37:15 3 report that you are not offering on behalf of
 10:37:20 4 Summit?
 10:37:20 5 MR. MOBLEY: Objection. He's not offering
 10:37:22 6 anything at all. That's an improper question. I'm
 10:37:24 7 not -- and I guess vague and ambiguous. I don't
 10:37:27 8 understand it.
 10:37:27 9 MS. BRILL: Okay.
 10:37:28 10 Q. Are you -- were you retained by Summit
 10:37:31 11 Media to offer an opinion in the litigation between
 10:37:35 12 Summit and the City of Los Angeles?
 10:37:38 13 A. I presume. The -- the retention is -- is
 10:37:41 14 not preceded or the -- you know, I haven't done a
 10:37:45 15 lot of work, so that -- so at this point I'm not
 10:37:49 16 sure what I'm going to be saying.
 10:37:50 17 This is -- I'm not sure what report will be
 10:37:53 18 prepared and maybe this -- or be presented. It may
 10:37:58 19 be this report. It may be a different report. It
 10:38:00 20 may be this report modified.
 10:38:02 21 I -- I'm -- I haven't written a report yet.
 10:38:07 22 Q. Okay. After you were retained or -- or you
 10:38:11 23 began retention discussions with Mr. Mobley, have
 10:38:15 24 you modified any of the opinions stated in that 2007
 10:38:18 25 report?

24

1 MS. BRILL: Why don't we stick it below
 2 that, below like right down there.
 3 MR. MOBLEY: That's fine. Thanks. Then
 10:36:24 4 I'd like to see it. Excuse me. I'm sorry.
 10:36:24 5 MS. BRILL: Okay. Exhibit 9 we'll mark as
 10:36:27 6 the -- or the letter from you to Mr. Paul Fisher
 10:36:30 7 dated December 21st, 2007 we'll mark as Exhibit 9.
 10:36:30 8 (The document referred to was
 10:36:30 9 marked for identification by the
 10:36:30 10 C.S.R. as Exhibit 9 and attached to
 10:36:43 11 this deposition.)
 10:36:43 12 BY MS. BRILL:
 10:36:44 13 Q. Can you verify that's the report you
 10:36:45 14 provided to Mr. Fisher in connection with the
 10:36:47 15 Worldwide Rush case?
 10:36:53 16 A. It is. And there may be exhibits missing.
 10:36:54 17 There are some exhibits missing.
 10:36:55 18 Q. Okay. Before --
 10:36:59 19 A. I don't believe there's exhibits in this
 10:37:00 20 one. The other one has the exhibits and -- some of
 10:37:04 21 which are missing.
 10:37:04 22 Q. Are there any opinions stated in that
 10:37:08 23 2007 -- we'll call it the 2007 report. Okay?
 10:37:11 24 A. (Witness nods.)
 10:37:12 25 Q. "Yes"?

23

10:38:19 1 A. No. The -- the report -- both reports,
 10:38:23 2 I'll say as far as I'm concerned, stand and are both
 10:38:27 3 valid.
 10:38:27 4 If -- you know, clearly circumstances or,
 10:38:33 5 you know, signs or particular locations or whatever
 10:38:34 6 that might come up which might have a -- a different
 10:38:38 7 angle or slant, if you want to call it that, and I
 10:38:41 8 may combine, modify or independently change the two
 10:38:45 9 reports. It depends on the situation, exactly
 10:38:48 10 what -- what the issue is.
 10:38:49 11 Q. But sitting here today, you're not aware of
 10:38:52 12 any opinions that you offered in 2007 that you want
 10:38:54 13 to revise now?
 10:38:55 14 A. No. I think they're both valid. Or this
 10:38:58 15 one and the 2004 report, both -- both are valid.
 10:39:01 16 MS. BRILL: Exhibit 10, let's mark as --
 10:39:03 17 it's entitled "Declaration of William Kunzman In
 10:39:07 18 Support of Motion For Preliminary Injunction" and
 10:39:09 19 the caption refers to the case Metro Lights LLC
 10:39:11 20 versus City of Los Angeles.
 10:39:13 21 (The document referred to was
 10:39:13 22 marked for identification by the
 10:39:13 23 C.S.R. as Exhibit 10 and attached
 10:39:15 24 to this deposition.)
 10:39:15 25 BY MS. BRILL:

25

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Brill Declaration Ex. B

-19-

10:39:15 1 Q. Can you verify this is a declaration that
 10:39:17 2 you submitted in connection with that case? I guess
 10:39:19 3 let's let the reporter mark it first as Exhibit 10.
 10:39:32 4 A. Yes, now this one here -- this refers --
 10:39:33 5 excuse me --
 10:39:33 6 Q. First, let's just -- first, that is the
 10:39:35 7 declaration that you submitted in the Metro Lights
 10:39:37 8 case?
 10:39:37 9 A. Well, yes. Except there are some -- some
 10:39:39 10 photographs missing.
 10:39:39 11 Q. Okay.
 10:39:41 12 A. So this -- this is the -- this is the
 10:39:43 13 exhibit. The photographs, somehow I think they're
 10:39:48 14 in the file that has now disappeared.
 10:39:51 15 So everything is here that I could play out
 10:39:52 16 in the computer very easily. The photographs
 10:39:57 17 themselves are not here. So that's the answer.
 10:40:12 18 Q. Okay. This Exhibit 11 we'll mark as a
 10:40:15 19 letter from me to you dated July 1st, 2008 attaching
 10:40:21 20 a subpoena.
 10:40:22 21 Is that -- I'm sorry, we got to get it
 10:40:24 22 marked and then I'll ask you to verify that's the
 10:40:26 23 subpoena and letter you received.
 10:40:26 24 (The document referred to was
 10:40:26 25 marked for identification by the

26

10:40:26 1 C.S.R. as Exhibit 11 and attached
 10:40:38 2 to this deposition.)
 10:40:38 3 THE WITNESS: Yes, this is the subpoena
 10:40:39 4 that I received.
 10:40:39 5 BY MS. BRILL:
 10:41:13 6 Q. This is Exhibit 12 we'll mark, which is the
 10:41:18 7 Pamela Anderson report that you referred to.
 10:41:20 8 (The document referred to was
 10:41:20 9 marked for identification by the
 10:41:20 10 C.S.R. as Exhibit 12 and attached
 10:41:22 11 to this deposition.)
 10:41:22 12 THE WITNESS: Yes.
 10:41:23 13 MR. MOBLEY: Just a -- just a question
 10:41:24 14 before we mark this. If I can ask the witness,
 10:41:27 15 is -- do you have other copies of that?
 10:41:29 16 THE WITNESS: No. I want --
 10:41:31 17 MR. MOBLEY: Is that the original?
 10:41:31 18 THE WITNESS: This is my original. I would
 10:41:33 19 like -- you may copy it today, but I would like the
 10:41:35 20 original back today.
 10:41:36 21 MR. MOBLEY: Do you have any objection if
 10:41:37 22 we mark a copy?
 10:41:40 23 MS. BRILL: Yeah, I think we have a copy.
 10:41:56 24 Oh, this is -- yeah. Yeah, this is it, this is it.
 10:41:56 25 Yeah.

27

10:42:13 1 Q. Can you -- can you take a look at that
 10:42:16 2 document, which has "Exhibit D" on it, and it's been
 10:42:18 3 marked by the court reporter as Exhibit 12 and
 10:42:21 4 verify that it's a copy of what you found, which was
 10:42:24 5 the Pamela K. Anderson report dated November 15,
 10:42:29 6 2001?
 10:42:30 7 A. Yes. I haven't reviewed every single page,
 10:42:33 8 but it appears to be the same document.
 10:42:34 9 Q. And that was an exhibit to your December
 10:42:39 10 2007 report?
 10:42:39 11 A. I -- I -- It may have been.
 10:42:39 12 Q. Okay.
 10:42:46 13 A. I think it was, yes.
 10:42:48 14 Q. Okay. And are you -- is it your testimony
 10:43:11 15 that you're not, to your knowledge, in possession of
 10:43:13 16 any other documents that are responsive to any of
 10:43:16 17 the other categories in the subpoena?
 10:43:18 18 A. That's correct.
 10:43:19 19 Q. Okay. And you checked electronic files and
 10:43:21 20 hard copy files?
 10:43:22 21 A. I -- yes, I did.
 10:43:26 22 Q. Sir, could you describe for me your
 10:43:28 23 education -- educational background, beginning with
 10:43:31 24 higher education?
 10:43:32 25 A. Yes.

28

10:43:34 1 I went to UCLA, have a bachelor's degree
 10:43:37 2 from there in engineering, 1967.
 10:43:40 3 I went to Yale University and did a -- a
 10:43:45 4 one-year program. Well, one-semester year program.
 10:43:48 5 I'm sorry, two semesters, one academic year. Ten
 10:43:51 6 classes. It did not result in a master's degree.
 10:43:54 7 They didn't -- they don't bestow that on this
 10:43:58 8 particular program. I completed that program. They
 10:44:00 9 call it a certificate in traffic engineering.
 10:44:04 10 I worked for the Federal Highway
 10:44:07 11 Administration and went through an 18-month training
 10:44:09 12 program with them. And that's my education.
 10:44:14 13 Q. What was the FHA training program like?
 10:44:19 14 A. FHWA. Federal Highway Administration.
 10:44:22 15 Q. Oh, thank you. FHWA?
 10:44:25 16 A. FHA, something else.
 10:44:25 17 Q. Federal highway.
 10:44:29 18 A. The -- the -- I'm sorry, what was the
 10:44:30 19 question?
 10:44:30 20 Q. What was the -- what was the train -- what
 10:44:32 21 did the training concern?
 10:44:34 22 A. The -- well, it was partly classroom and
 10:44:37 23 partly in-field assignments. But it was strictly
 10:44:41 24 training. It wasn't necessarily a -- a work -- you
 10:44:44 25 know, a work output was not the abjective. It was

29

10:44:49 1 to train, train how the Federal Highway	10:48:07 1 THE VIDEOGRAPHER: Back on the record. The
10:44:52 2 Administration, you know, views highways and	10:48:08 2 time is 10:48.
10:44:55 3 operation and planning and design and all aspects of	10:48:13 3 THE WITNESS: If I could add maybe one more
10:44:59 4 administration.	10:48:15 4 sentence to the last answer. The term "engineering
10:44:59 5 Q. Mostly from a safety perspective or from	10:48:18 5 judgment" comes into use quite a bit. Some things
10:45:02 6 other perspectives?	10:48:21 6 are black and white. There's, you know, thou-shall-
10:45:04 7 A. From all perspectives, yeah. Plain	10:48:26 7 and thou-shalt-not-type of -- of things in the
10:45:06 8 building the highways and operating them, all the	10:48:29 8 literature and regulations and this kind of stuff,
10:45:08 9 way through. Building -- well, designing -- well,	10:48:32 9 but most of the time there is no clear-cut -- you
10:45:11 10 actually it starts with right-of-way acquisition,	10:48:36 10 know, clear-cut regulation or, you know, mandatory
10:45:14 11 design, build, operate.	10:48:40 11 requirement.
10:45:17 12 Q. Can you describe for me generally what's in	10:48:41 12 And engineering judgment gets involved.
10:45:19 13 the scope of -- what the field of traffic	10:48:44 13 That's -- that's a key issue in a lot of traffic
10:45:21 14 engineering entails?	10:48:47 14 issues.
10:45:23 15 A. Yes. Let's start with engineering.	10:48:47 15 BY MS. BRILL: --
10:45:27 16 Engineering is the art of applying	10:48:49 16 Q. You referred before to street furniture.
10:45:30 17 scientific principles to solving I'll say an	10:48:51 17 Does that include bus shelters in your
10:45:34 18 ordinary everyday problem. That's what engineering	10:48:55 18 experience?
10:45:37 19 is.	10:48:55 19 A. I'd say yes. Anything that's -- generally,
10:45:37 20 In the case of traffic engineering, it's	10:49:00 20 anything in the public right-of-way I think would be
10:45:42 21 easier to define the goals.	10:49:02 21 considered street furniture, even -- even including
10:45:44 22 The goals and objective for traffic	10:49:05 22 sidewalks, where you have trees, you know, in what
10:45:46 23 engineering is safe, expeditious movement of people	10:49:12 23 they call the parkway, which is the area between the
10:45:49 24 and goods. And sometimes you'll hear the word --	10:49:14 24 right-of-way line and the curb face is what they
10:45:56 25 sometimes you hear the word "economic" put in there,	10:49:16 25 call the parkway. Sometimes it has grass, sometimes
30	32
10:45:58 1 so it's safe expeditious and economic movement of	10:49:19 1 it has grass and sidewalks, sometimes it just has a
10:46:01 2 people and goods. That's the goals of traffic	10:49:21 2 sidewalk, sometimes it's dirt, sometimes there's
10:46:04 3 engineering.	10:49:25 3 vegetation, trees, whatever in there, and including
10:46:05 4 The tools that we use are signs, signals,	10:49:28 4 what's out in the median, too. You sometimes have
10:46:10 5 crosswalks, guardrails. I think I said traffic	10:49:31 5 landscaped medians or raised medians; not always
10:46:16 6 signals. If I didn't, traffic signals. That's our	10:49:34 6 raised.
10:46:19 7 tools.	10:49:35 7 Q. So the focus of the traffic engineer is on
10:46:19 8 And the objective is -- primary objective	10:49:37 8 the public rights-of-way?
10:46:24 9 is safe operation of the streets. Someone said that	10:49:38 9 A. Yeah, in general. I'm sure there's
10:46:28 10 we're involved with everything above the blacktop,	10:49:40 10 exceptions, but generally we're concerned only about
10:46:32 11 including paint, black and white line. I think it	10:49:42 11 the right-of-way, what's in the right-of-way.
10:46:37 12 actually goes -- it's a pretty simplistic view, but	10:49:44 12 Q. Are public toilets also within the scope of
10:46:39 13 it's -- it's pretty accurate. We actually call it	10:49:47 13 street furniture?
10:46:42 14 street furniture, which I know is a term in this --	10:49:48 14 A. I would say if it's in the right-of-way
10:46:44 15 this case.	10:49:50 15 it's -- it's -- yeah, I would say yes.
10:46:44 16 Street furniture is things that we put in,	10:49:53 16 Q. And in your -- in your educational
10:46:47 17 which would be signs and signals and guardrails,	10:49:56 17 background or with -- with the -- either in school
10:46:51 18 crosswalks, that kind of stuff. That's a pretty	10:49:59 18 or with the Federal Highway Administration, did you
10:46:58 19 good definition.	10:50:02 19 discuss unique aspects of the public rights-of-way?
10:47:00 20 MR. MOBLEY: May we take a short break to	10:50:12 20 A. I'm sure they did. It's -- It's been a few
10:47:02 21 let the court reporter reset herself?	10:50:12 21 years. 40 years to be -- to be more precise. I'm
10:47:05 22 THE REPORTER: Thank you.	10:50:17 22 sure they did. You know, unique things happen, com
10:47:05 23 THE VIDEOGRAPHER: Off the record. The	10:50:19 23 up. You know, it's not all standard, so at least
10:47:07 24 time is 10:47.	10:50:23 24 indirectly. I'm not sure they said, now, these are
10:47:49 25 (Brief recess.)	10:50:25 25 unique features, let's send them off, but I'm sure
31	33

10:50:29 1 Indirectly.
 10:50:30 2 Q. In -- in your understanding, why do traffic
 10:50:32 3 engineers focus on the public rights-of-way?
 10:50:34 4 A. Well, actually, -- actually, I should amend
 10:50:39 5 that answer.
 10:50:40 6 The -- from a City's point of view, or from
 10:50:42 7 a governmental agency's point of view, the
 10:50:45 8 right-of-way, what's within the right-of-way is
 10:50:48 9 what's at issue.
 10:50:49 10 But, for instance, if my -- my firm is
 10:50:52 11 hired to do a traffic study for a -- say a shopping
 10:50:54 12 center, we're also concerned about -- about what's
 10:50:57 13 within the shopping center. The aisles, the -- the
 10:50:59 14 crosswalks, the -- the size of the parking spaces.
 10:51:04 15 All of that stuff, which is private property.
 10:51:07 16 So from that point of view, yes, we're
 10:51:10 17 involved with private property, too. But from a
 10:51:11 18 governmental agency point of view, it's generally
 10:51:13 19 just what's in the right-of-way.
 10:51:18 20 Q. Okay. And do you have an understanding of
 10:51:18 21 why the governmental agencies focus on what's in the
 10:51:22 22 right-of-way for -- for purposes of traffic
 10:51:24 23 engineering?
 10:51:25 24 MR. MOBLEY: Objection. Calls for
 10:51:31 25 speculation.

34

10:52:47 1 Generally the cities are relatively
 10:52:49 2 consistent from one city to the next.
 10:52:53 3 Q. In treating public rights-of-way
 10:52:55 4 differently from private property?
 10:52:56 5 A. Well, yeah. That would always be the case.
 10:52:59 6 But even within cities they're -- they're -- most
 10:53:03 7 cities tend to do roughly the same thing, roughly
 10:53:07 8 the same requirements. They differ, but roughly the
 10:53:11 9 same requirements.
 10:53:11 10 Q. As one another?
 10:53:12 11 A. Uh-huh, yeah. Similarities.
 10:53:16 12 Q. Okay. Did you study -- in your educational
 10:53:29 13 background, did you study public transportation?
 10:53:31 14 A. Yes. Yes.
 10:53:33 15 Q. What was the focus of that study?
 10:53:35 16 A. Well, just -- there is such a thing --
 10:53:39 17 there's -- it's what -- one of the things was
 10:53:42 18 like -- what we call mobile splits, how many people
 10:53:46 19 ride public transit, how do you predict that, how
 10:53:48 20 would you increase that, what are the factors
 10:53:52 21 that -- that determine whether a person rides a bus,
 10:53:56 22 say, or rides a -- you know, a subway versus drive
 10:53:59 23 his own -- his own cars.
 10:54:02 24 So those are -- in fact, that's something
 10:54:04 25 that's pretty -- always a topic that's, you know, on

36

10:51:31 1 THE WITNESS: The -- generally that's
 10:51:33 2 what -- that's what they control. But there are
 10:51:35 3 times when other aspects outside of the right-of-way
 10:51:40 4 are -- are addressed. Particularly of variances and
 10:51:43 5 that type of stuff. You know, anything that's going
 10:51:45 6 to be done with a piece of land, regardless -- well,
 10:51:48 7 not regardless of who owns it, but private land or
 10:51:51 8 public land generally receives or requires an
 10:51:54 9 approval by, say, the City, by a government agency.
 10:51:58 10 Sometimes that's -- it's under zoning and
 10:52:05 11 it's under, well, the general plan, it's under
 10:52:07 12 zoning, and then within those purviews, you have --
 10:52:10 13 you have the code. You have the parking code. You
 10:52:12 14 have the zoning code. You have various code
 10:52:15 15 sections.
 10:52:16 16 And those involve off -- involve private
 10:52:21 17 property, off-public property.
 10:52:26 18 I guess I answered the question.
 10:52:27 19 Q. Okay. And those cities generally have
 10:52:31 20 different regulations affecting the public
 10:52:34 21 rights-of-way versus private property, correct?
 10:52:38 22 A. Yes. I don't know if you mean different
 10:52:39 23 between cities or different -- they're just
 10:52:41 24 different because part of it's city and part of it's
 10:52:45 25 private land. Different in both cases.

35

10:54:08 1 our minds and today with the -- the gas prices,
 10:54:14 2 it -- you know, nearly \$5 a gallon, we're seeing
 10:54:17 3 increased public transit usage.
 10:54:19 4 So it's always of interest to us, how do
 10:54:21 5 you get more people to -- to use public transit.
 10:54:24 6 Q. And does the availability of bus shelters
 10:54:28 7 contribute to getting people to ride buses rather
 10:54:31 8 than take private cars?
 10:54:33 9 MR. MOBLEY: Objection. Incomplete
 10:54:35 10 hypothetical. Calls for speculation.
 10:54:37 11 THE WITNESS: The amenities of any type
 10:54:43 12 presumably help. I mean, one -- one bus shelter in
 10:54:46 13 all of the city in L.A. is not going to make much
 10:54:50 14 difference, but bus shelters are going to help in
 10:54:52 15 general, so --
 10:54:53 16 BY MS. BRILL:
 10:54:59 17 Q. Have you ever studied the relative traffic
 10:55:01 18 safety of individual cars versus bus transportation?
 10:55:06 19 A. Not directly. I've seen the statistics.
 10:55:14 20 Yeah, generally the public transit is safer. Safer
 10:55:18 21 meaning less -- less accidents, less persons injured
 10:55:21 22 or killed per, you know, million vehicle miles of
 10:55:24 23 travel.
 10:55:26 24 Q. Tell me about your work experience since
 10:55:29 25 you graduated or since you got your certificate from

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10:55:33 1 Yale.

10:55:35 2 A. The -- well, my -- well, actually, let me

10:55:43 3 talk about the bigger jobs and not the summer jobs

10:55:46 4 and stuff. Actually, I'll try to talk about them

10:55:49 5 all if I remember them.

10:55:50 6 I worked for the County of Los Angeles,

10:55:54 7 traffic engineering section for a summer job for

10:55:57 8 like three months. That was between going from UCLA

10:56:01 9 to Yale. The break between the two.

10:56:04 10 After working at Yale, I mean, going to

10:56:08 11 school at Yale, I had another brief summer job,

10:56:13 12 Willbur Smith & Associates.

10:56:14 13 After that, I went to work for the Federal

10:56:21 14 Highway Administration for three years.

10:56:22 15 After that, I worked for the County of

10:56:25 16 Riverside. These are all as a traffic engineer.

10:56:28 17 County of Riverside.

10:56:31 18 After that, I worked for a consulting firm,

10:56:36 19 Lampman Associates.

10:56:37 20 After that, I worked for another

10:56:39 21 consulting -- no, I worked for the City of Irvine as

10:56:42 22 the first traffic person, transportation person they

10:56:45 23 had in the city.

10:56:46 24 After that I worked for a consultant,

10:56:52 25 Weston Pringle & Associates which formerly it was

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10:56:54 1 Crommelin-Pringle & Associates -- actually it was

10:56:57 2 Crommelin-Pringle & Associates when I went to work

10:56:59 3 and then it became Weston Pringle & Associates.

10:57:03 4 Same job but two different names. After that I

10:57:06 5 became self-employed.

10:57:07 6 Q. That was beginning?

10:57:07 7 A. Self-employment was '76.

10:57:11 8 Q. And that's when you started your consulting

10:57:13 9 firm?

10:57:13 10 A. Yes.

10:57:16 11 Q. In -- in any of these government or other

10:57:21 12 jobs before you started your own business, did you

10:57:24 13 work on public transportation issues?

10:57:27 14 A. Yes. The -- coming to mind, City of Irvine

10:57:37 15 I worked on some public transportation issues. In

10:57:40 16 fact, I was kind of the City's manager of the bus

10:57:42 17 system. They had a little summer bus program. Try

10:57:46 18 to keep the kids -- give them something to do, so

10:57:48 19 they circled between the villages and picked up --

10:57:50 20 like on an hourly schedule, picked up the kids or

10:57:53 21 anybody else and would take them to a shopping

10:57:55 22 center or something like that. So I've actually

10:57:59 23 managed the bus system. Limited, but I did it.

10:58:02 24 Then working for -- I believe it was when I

10:58:15 25 worked for Weston Pringle, Weston Pringle &

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10:58:19 1 Associates. There was -- I did a multimodal study,

10:58:22 2 which is quite interesting. How many people -- this

10:58:24 3 was for UCI, University California Irvine -- how

10:58:27 4 many people would walk -- mode -- all the modes

10:58:30 5 consist of walking, bicycling, and they were doing a

10:58:35 6 little campus shuttle, a bus that circled around the

10:58:39 7 campus. The campus shuttle, the -- riding public

10:58:43 8 transportation, you know, and then driving the car.

10:58:47 9 So I guess that's five modes. And the

10:58:50 10 question was how many people would ride the shuttle;

10:58:54 11 predict the amount of time -- or the amount of

10:58:55 12 people that would ride the shuttle if they drove a

10:58:57 13 shuttle around campus.

10:59:01 14 So I did that, which is obviously quite

10:59:03 15 involved with public transportation. And those come

10:59:08 16 to mind. There's probably others.

10:59:08 17 Q. Okay.

10:59:09 18 A. Those are the bigger ones.

10:59:11 19 Q. In your -- in your work in Irvine managing

10:59:14 20 the bus system, were there bus shelters that were

10:59:18 21 part of that bus system?

10:59:23 22 A. Not part of that bus system. As I -- well,

10:59:24 23 I do recall directly also within the city was --

10:59:29 24 were bus shelters. The Orange County Transit

10:59:32 25 District, OCTD, Orange County Transit District which

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10:59:35 1 the bus company for -- that's what they called it

10:59:38 2 back then for Orange County, they did have bus

10:59:41 3 shelters. I re -- recall discussions and so forth

10:59:45 4 on those -- on those bus shelters.

10:59:47 5 Q. Were you involved in siting the bus

10:59:49 6 shelters?

10:59:49 7 A. I don't -- I don't think so. I don't

10:59:53 8 remember. I don't recall.

10:59:59 9 Q. But generally, traffic engineers are

11:00:00 10 involved in make determinations about where bus

11:00:02 11 stops will be?

11:00:03 12 A. Yes.

11:00:04 13 Q. Okay. And where bus shelters will be?

11:00:06 14 A. Yes.

11:00:08 15 Q. Okay.

11:00:08 16 A. As I recall, the -- the OCTD would say we'd

11:00:14 17 like stops here, here and here, you know, coming say

11:00:16 18 down Culver, Culver Drive. And it was up to the

11:00:18 19 City to say okay or no. So I -- I believe that's

11:00:21 20 how it happened. So I didn't site them directly,

11:00:23 21 but probably said, yeah, that looks like a good

11:00:26 22 place.

11:00:26 23 Q. And did those bus shelters have

11:00:29 24 advertising?

11:00:29 25 A. I believe some of them did. And -- and

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11:00:32 1 that was an issue, I'll say that was kind of an
 11:00:35 2 issue of -- of whether they should, where it should
 11:00:42 3 be on the -- on the bus shelter, should it be on
 11:00:45 4 the -- perpendicular to the street or just on the
 11:00:47 5 back, should it be for the benefit of the rider of
 11:00:50 6 the bus versus the person driving by in a car. I
 11:00:52 7 say "benefit," should be aimed at those two.

11:00:58 8 Q. And you remember where the advertising was
 11:01:00 9 placed?

11:01:00 10 A. I -- I believe it ended up perpendicular to
 11:01:05 11 the -- to the street. And I believe I raised an
 11:01:09 12 issue or said, you know, this is a distraction to
 11:01:12 13 the driver.

11:01:14 14 This -- OCTD basically said, well, the --
 11:01:17 15 you know, these bus shelters get paid for by -- you
 11:01:20 16 know, they're -- private companies put the bus
 11:01:26 17 shelters on the street. Doesn't cost us a penny.
 11:01:30 18 Basically speaking, doesn't cost anything. And the
 11:01:34 19 City said we're going to have bus shelters.

11:01:34 20 THE REPORTER: The City what?

11:01:34 21 THE WITNESS: More for less said they're
 11:01:35 22 going to have bus shelters.

11:01:37 23 And I don't remember the formal procedures,
 11:01:39 24 but it was -- that was not my decision. I just,
 11:01:44 25 I'll put them -- where do you want to put them now?

42

11:02:47 1 BY MS. BRILL:

11:02:55 2 Q. Now in your consulting work you do traffic
 11:03:00 3 studies, traffic analyses, correct?

11:03:00 4 A. Yes.

11:03:04 5 Q. What's the difference between a traffic
 11:03:06 6 study and a traffic analysis?

11:03:07 7 A. Just the name. Difference between a house
 11:03:09 8 and a home. They're both kind of the same thing.

11:03:12 9 A -- they're the same thing.

11:03:14 10 Q. Can you describe generally the types of
 11:03:19 11 consulting work that you do once -- or began to do
 11:03:22 12 once you started your own company?

11:03:24 13 A. Well, a lot of -- you know, probably dozens
 11:03:27 14 of different types, but generally the -- the biggest
 11:03:32 15 component, the primary one which is way over half is
 11:03:36 16 what we call traffic impact study or analysis.

11:03:41 17 And traffic impact analysis is generally
 11:03:43 18 for new development or revitalization of an existing
 11:03:48 19 development. And the typical questions you're
 11:03:53 20 trying to answer is are the streets big enough to
 11:03:56 21 handle it and what kind of traffic control is needed
 11:03:59 22 at the intersections, signals, stop signs. And
 11:04:05 23 often additional lanes is an issue. Should we put
 11:04:08 24 in a double left-turn pocket, say, where there's
 11:04:10 25 currently a single left-turn pocket.

44

11:01:45 1 BY MS. BRILL:

11:01:45 2 Q. And as you -- when you were at Irvine, did
 11:01:50 3 you ever come to hear of any traffic accidents
 11:01:53 4 caused by those bus shelters?

11:01:55 5 A. I don't recall. I don't -- I don't believe
 11:01:57 6 so. But I don't recall.

11:02:03 7 Q. Was it your understanding that the bus
 11:02:04 8 shelters there would have not been feasible in the
 11:02:08 9 absence of an advertising support?

11:02:11 10 MR. MOBLEY: Objection. Lack of
 11:02:13 11 foundation. Calls for speculation.

11:02:17 12 THE WITNESS: I believe it was presented to
 11:02:19 13 me the other way around, that we wouldn't -- the
 11:02:22 14 City, the City would not have them if it wasn't for
 11:02:26 15 someone else paying for them. Someone else is
 11:02:28 16 paying for them so, therefore, the City would accept
 11:02:31 17 them. I believe that was the way it was basically
 11:02:37 18 presented to me.

11:02:37 19 BY MS. BRILL:

11:02:38 20 Q. But the City regarded the bus shelters as
 11:02:40 21 an amenity for public transit, correct?

11:02:43 22 MR. MOBLEY: Objection. Calls for
 11:02:45 23 speculation. Lack of foundation.

11:02:46 24 THE WITNESS: I believe that would be
 11:02:47 25 correct.

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11:04:12 1 And that -- those issues are generally
 11:04:18 2 what's the most important or what's looked at the
 11:04:22 3 most.

11:04:22 4 But like I said, there's a lot of other
 11:04:26 5 studies, a lot of -- you know, there's -- there's
 11:04:28 6 just a lot of other studies, lot of miscellaneous
 11:04:32 7 studies besides those.

11:04:37 8 Q. Has any of your consulting work focused on
 11:04:41 9 public transportation?

11:04:51 10 A. I don't recall a single job where -- where
 11:04:54 11 public transportation was the focus.

11:04:55 12 Q. Okay.

11:05:00 13 A. I might add we've done 4,200 jobs, so
 11:05:03 14 sometimes I forget one of those jobs. Over 40 years
 11:05:07 15 or over -- yeah, over 30 -- I'm sorry, over 32
 11:05:11 16 years.

11:05:11 17 Q. Okay.

11:05:12 18 A. So self-employed for 32 years and we've
 11:05:15 19 done 4,200 jobs, so --

11:05:18 20 Q. Going back to your work at UCI where you --
 11:05:22 21 what year was that?

11:05:26 22 A. That would have been early -- no, I mean,
 11:05:31 23 late '70s, like '70 -- '76 to 1980, 1976 to 1980,
 11:05:37 24 somewhere in that range. And I had several jobs and
 11:05:40 25 did -- besides the -- the -- the people mover -- or

45

11:05:46 1	not the people mover, but the -- the shuttle bus, I	11:08:45 1	A. No. We do a lot of transportation
11:05:50 2	did several other jobs.	11:08:47 2	planning, which is getting close, but an urban
11:05:52 3	Q. And was there any discussion in connection	11:08:50 3	planner, per se, no.
11:05:54 4	with your work at U -- UCI about whether bus	11:08:51 4	Q. When you say "transportation planning,"
11:05:57 5	shelters might enhance ridership of the shuttles?	11:08:53 5	you're not referring to mass transit, correct?
11:06:02 6	A. I don't believe so. No. The -- there -- I	11:08:55 6	A. Well, there -- there's a subtle distinction
11:06:06 7	don't know if you've been to UCI. There's a	11:08:59 7	between traffic engineering and transportation
11:06:08 8	nice-looking pedestrian overcrossing that crosses	11:09:01 8	planning.
11:06:10 9	the campus. I prepared the study on that. And one	11:09:02 9	Traffic engineering normally is considered
11:06:15 10	of the -- one of the purposes or one of the benefits	11:09:05 10	more of the day-to-day operation of a facility.
11:06:29 11	of that -- that pedestrian overpass, Campus is kind	11:09:08 11	Transportation planning is normally looking
11:06:35 12	of a big street there and there's commercial on one	11:09:13 12	into the future, you know, 20 years out, 30 years
11:06:38 13	side and UCI is on the other side, so there's a lot	11:09:15 13	out and trying to determine what's needed, what's
11:06:41 14	of interaction pedestrian-wise between the two.	11:09:18 14	going to be needed in 30 years to -- to operate the
11:06:44 15	And the bus stops, there are some bus	11:09:20 15	streets.
11:06:47 16	stops, of course, depending on which direction you	11:09:23 16	And what we do intermixes a lot between
11:06:49 17	want to go on campus. So one of the benefits of the	11:09:27 17	traffic engineering and transportation planning.
11:06:53 18	pedestrian overcrossing was to get pedestrians who	11:09:30 18	Anything in the future is transportation
11:06:56 19	wanted to ride the bus on the other side of the	11:09:33 19	planning. Anything today is traffic engineering.
11:06:58 20	street.	11:09:35 20	So --
11:06:58 21	So that was a benefit. So to that extent,	11:09:37 21	Q. Okay. And so when you do your
11:07:03 22	public transportation I guess was involved, but	11:09:39 22	transportation planning work, does that involve mass
11:07:05 23	that's the only one I recall.	11:09:44 23	transit?
11:07:09 24	Q. Do you recall how much you were paid for	11:09:45 24	A. Indirectly. Well, to some degree. But
11:07:10 25	your expert witness work in the Metro Lights case?	11:09:55 25	not -- not -- typically not very directly.
46		48	
11:07:14 1	A. I don't.	11:09:58 1	Typically, if there's a bus route we may mention
11:07:20 2	Q. How about for your -- for the Worldwide	11:10:02 2	there's a bus route that passes by the site. Or --
11:07:22 3	Rush case?	11:10:06 3	or sometimes we get into, -you know, we review a
11:07:22 4	A. I -- it was either 5,000 or 7,500. I can't	11:10:15 4	plan that has a bus stop on the plan and we look at
11:07:30 5	remember which. It's one of those two.	11:10:21 5	it and say, okay, it looks like a logical place.
11:07:32 6	Q. And were those amounts pursuant to about	11:10:23 6	Bus stops are typically the far side of an
11:07:35 7	approximately the same rates that you're charging	11:10:26 7	intersection. That's your best place. So if we see
11:07:38 8	Mr. Mobley?	11:10:29 8	a bus stop on the far side, we consider that's a
11:07:38 9	A. Yes.	11:10:32 9	reasonable place to put it.
11:07:45 10	Q. Were you the only person in your firm who	11:10:33 10	Q. But you don't get into deciding where the
11:07:48 11	worked on those cases?	11:10:36 11	bus route should be?
11:07:50 12	A. Yes.	11:10:37 12	A. Almost -- let's say no. There may be a
11:07:53 13	Q. Have you been an expert in any other cases	11:10:41 13	couple exceptions, but no.
11:07:55 14	in which the constitutionality of a sign regulation	11:10:42 14	Q. And you don't get into details about where
11:07:59 15	was at issue?	11:10:45 15	bus shelters should be or whether bus shelters
11:08:04 16	A. I don't believe so. The -- those two	11:10:48 16	should be provided?
11:08:13 17	cases -- those two cases in particular come to mind.	11:10:49 17	A. No.
11:08:19 18	And that's it. Don't recall anything else.	11:10:50 18	Q. And you're typically not the person who
11:08:33 19	Q. So based on your work experience, you	11:10:52 19	would say where the bus -- in the first instance,
11:08:35 20	consider yourself to be an expert in traffic	11:10:55 20	where the bus stops should be, correct?
11:08:37 21	engineering?	11:10:59 21	A. That's correct in the -- in the first
11:08:38 22	A. Yes.	11:10:59 22	instance, yeah, we -- we would not be the right
11:08:39 23	Q. But you're not an architect, correct?	11:11:02 23	person.
11:08:41 24	A. No, I'm not an architect.	11:11:04 24	Q. And you don't have expertise in visual
11:08:42 25	Q. You're not an urban planner?	11:11:07 25	design, correct?
47		49	

11:11:07 1	A. That's correct.	11:13:14 1	the straight-ahead line and that's what drivers
11:11:08 2	Q. And you're not -- you're not an expert in	11:13:16 2	typically can be expected to see and recognize and
11:11:11 3	mass transit, correct?	11:13:20 3	process, if you want to call it that.
11:11:12 4	A. No, I wouldn't hold myself out as that.	11:13:22 4	So peripheral vision, you know, I'm not
11:11:15 5	Q. Or public finance?	11:13:25 5	going to say I'm an expert in that. But we use this
11:11:16 6	A. No.	11:13:30 6	cone of vision. That's a central consideration that
11:11:18 7	Q. Or the outdoor advertising business?	11:13:33 7	we have as traffic engineers.
11:11:20 8	A. No.	11:13:35 8	THE VIDEOGRAPHER: Ms. Brill, can we go off
11:11:21 9	Q. Or cognitive processing?	11:13:37 9	the record for one second? -
11:11:23 10	A. Well, okay. And that's human factors.	11:13:38 10	MS. BRILL: Yes.
11:11:28 11	You've got to realize, there's an overlap	11:13:39 11	THE VIDEOGRAPHER: Off the record at 11:13.
11:11:31 12	between traffic engineering and -- and human	11:14:10 12	(Pause in proceedings.)
11:11:36 13	factors.	11:14:11 13	THE VIDEOGRAPHER: Back on the record at
11:11:36 14	If -- you know, a Venn diagram, there's two	11:14:12 14	11:14.
11:11:41 15	circles, but they sort of overlap and cover a little	11:14:12 15	MS. BRILL: Thank you.
11:11:43 16	bit of the same territory. That's the way it is.	11:14:13 16	Q. So, Mr. Kunzman, just before we went off
11:11:45 17	So there are certain things that we do that	11:14:15 17	the record to deal with some sound issues, you were
11:11:48 18	they also do or they do and we also do.	11:14:17 18	discussing this vision cone, correct?
11:11:51 19	So -- so to say I'm an expert on human	11:14:22 19	A. Yes. So, and -- and you asked if I was an
11:11:55 20	factors, no. To say I am involved with those issues	11:14:24 20	expert in peripheral vision and I said, well, no,
11:11:58 21	sometimes, that would -- well, I am involved with	11:14:27 21	but that part of vision.
11:12:01 22	those issues sometimes.	11:14:30 22	Peripheral vision means what do you see way
11:12:04 23	Q. Are you an expert on the science of	11:14:31 23	out here, roughly 90 degrees from your eye. That --
11:12:06 24	processing visual information?	11:14:34 24	that -- that's not what we deal with, but we do deal
11:12:08 25	A. No.	11:14:37 25	with a cone of vision, which is pretty close to
50		52	
11:12:10 1	Q. Are you an expert in the limbic system?	11:14:42 1	that -- that same issue, at least.
11:12:13 2	A. In the what?	11:14:43 2	Q. And, in general, if something is outside
11:12:14 3	Q. The limbic system?	11:14:45 3	this 15 -- 15-degree cone, does that mean the
11:12:15 4	A. No.	11:14:49 4	driver would turn his or her head in order to see
11:12:16 5	Q. The operation of the cerebral cortex?	11:14:52 5	it?
11:12:18 6	A. No.	11:14:52 6	A. Let me not answer that directly and answer
11:12:19 7	Q. No?	11:14:55 7	it a whole different way.
11:12:21 8	Are you an expert on peripheral vision?	11:14:56 8	In -- in traffic engineering, when it comes
11:12:23 9	A. No, I -- and -- and I'm not an expert on	11:15:00 9	to like signs, and I'm talking about directional
11:12:27 10	peripheral vision, but in traffic engineering	11:15:02 10	signs, we consider that a driver should be able to
11:12:30 11	there's -- we come up with what they call a cone of	11:15:05 11	read the sign in a 15-degree cone. In other words,
11:12:36 12	vision which can best -- best be explained as if you	11:15:08 12	when they're looking 15 degrees off of straight
11:12:40 13	were to, so to speak, put a pencil looking straight	11:15:14 13	ahead, they should be able to read the sign.
11:12:43 14	ahead out of one of your eyes or, you know, straight	11:15:16 14	In other words, the letters, the size of
11:12:45 15	out of -- looking straight ahead, you see everything	11:15:18 15	the letters on the directional sign say -- need to
11:12:47 16	that's straight ahead, and you see everything --	11:15:20 16	be large enough so that an average driver, when far
11:12:49 17	there's a cone, what we call a cone of vision.	11:15:24 17	enough back so that the sign is within 15 degrees,
11:12:51 18	And the cone is often defined as 15 degrees	11:15:28 18	the person can read it.
11:12:54 19	from straight ahead. So if you were to -- I always	11:15:29 19	In other words, they shouldn't have to
11:12:57 20	think of it as an megaphone. If you had a megaphone	11:15:31 20	drive, let's say, virtually up to it and look at,
11:12:59 21	and you're looking through it, you've got the -- you	11:15:35 21	you know, a fairly sharp angle to read the sign.
11:13:02 22	know it -- it expands out as you look forward.	11:15:38 22	That -- that's just -- that's not how you do -- do a
11:13:05 23	So the cone of vision is basically -- looks	11:15:39 23	sign.
11:13:08 24	a little bit like an megaphone, but it's a	11:15:40 24	So in the 15 degrees, it's -- there's no
11:13:11 25	straight-ahead line. And you go out 15 degrees from	11:15:43 25	scientific basis that just says this is how you have
51		53	

11:15:46 1	to do it, 16 degrees doesn't work and 14 degrees --	11:18:19 1	distraction is -- is dangerous or is more dangerous
11:15:50 2	it's -- it's custom and practice. That's kind of	11:18:22 2	than another kind of distraction -- and I'm using
11:15:53 3	the way it's been done for a long time. And it's --	11:18:26 3	the word "distraction." You got to have some kind
11:15:57 4	it's considered the way you normally do it. So	11:18:28 4	of a word that says if it's something you don't have
11:16:00 5	that -- that's what it is.	11:18:30 5	to look at and you look at, then, you know,
11:16:03 6	Q. And so is it the case that the farther you	11:18:33 6	that's -- so I chose the word "distraction."
11:16:05 7	have to turn your head to see a sign, the more	11:18:36 7	So there's minor distractions. You look at
11:16:11 8	likely it is to cause accidents?	11:18:39 8	the flowers, but your eye's pretty much straight
11:16:13 9	A. I -- I wouldn't say for sure that that's	11:18:42 9	ahead and you're -- you're -- you know, you're
11:16:17 10	the case. But the point is, what you see, what	11:18:44 10	seeing what's ahead of you as you drive.
11:16:22 11	you're -- what you're likely to see, what your eye	11:18:47 11	In addition to the cone, you have the --
11:16:25 12	is likely to see and you're likely to process is	11:18:51 12	I'm going to call it target value. And "target"
11:16:29 13	things within roughly a 15-degree cone.	11:18:55 13	meaning if it's a -- you know, it's one flower or
11:16:32 14	Now, of course, you can look, you may see	11:18:59 14	something that's a lot less target than if it's --
11:16:34 15	things off to the side, but if you're just driving	11:19:02 15	if it's very large, if it fills up a big percentage
11:16:38 16	down the street without particularly looking for	11:19:05 16	of your cone of vision.
11:16:40 17	anything, you normally see what's in a 15-degree	11:19:06 17	The bigger the target, of course, the more
11:16:42 18	cone, and what's outside of there you're not as	11:19:09 18	likely you're going to look and see it and perhaps
11:16:45 19	likely to see and not -- you know, you almost have	11:19:13 19	be distracted. So there's that aspect.
11:16:49 20	to consciously try to see something outside that	11:19:20 20	You can ask the next question. I'm not
11:16:52 21	cone. That's how it's used.	11:19:22 21	sure I answered that one real well, but --
11:16:54 22	Q. And if you're turning -- if a driver is	11:19:22 22	BY MS. BRILL:
11:16:57 23	turning his or her head to the side to see something	11:19:38 23	Q. Do you have an opinion whether turning your
11:17:00 24	outside the cone, does that mean they're looking	11:19:39 24	head to the side away from traffic is -- has an
11:17:02 25	away from the action on the roadway?	11:19:43 25	impact on traffic safety?
54		56	
11:17:05 1	MR. MOBLEY: Objection. Vague and	11:19:45 1	MR. MOBLEY: Objection. Incomplete
11:17:07 2	ambiguous. And incomplete hypothetical.	11:19:47 2	hypothetical. And calls -- is vague and ambiguous.
11:17:11 3	THE WITNESS: It -- if the ultimate	11:19:52 3	THE WITNESS: Is -- is -- okay. There's
11:17:14 4	question is are signs dangerous, in my opinion	11:19:57 4	little evidence anywhere that signs, looking at a
11:17:17 5	they're not. They're -- they're not such a	11:20:02 5	sign causes accidents. There's -- there's -- as far
11:17:19 6	distraction that they're -- they're, per se,	11:20:07 6	as I'm concerned, there's no evidence.
11:17:25 7	dangerous on the one hand.	11:20:08 7	So if you're -- if you're looking, casually
11:17:29 8	On the other hand they are a distraction,	11:20:13 8	looking at something of, I'll say low interest, I
11:17:31 9	but I think everything -- a driver's driving down	11:20:21 9	don't think those cause accidents.
11:17:34 10	the street, in essence, everything is a distraction,	11:20:22 10	Now, if it's a traffic accident, for
11:17:36 11	whether it's driving down Avenue of the Stars and	11:20:25 11	instance, you're passing and there's somebody laid
11:17:38 12	looking at a, whatever, 20-story building, or you	11:20:27 12	out on the ground and, you know, people are tending
11:17:43 13	know, admiring the flowers in the -- you know,	11:20:30 13	to -- to, of course, gawk at the -- the -- this
11:17:47 14	the -- in the median or whatever, it's still a	11:20:35 14	person, this accident, and then they tend to have
11:17:49 15	little bit of a distraction.	11:20:37 15	rear-ends, rear-end accidents. There's no question
11:17:51 16	And we all obviously have -- we all	11:20:41 16	that that also happens.
11:17:53 17	obviously see things besides the center line of the	11:20:42 17	So it's -- it's like degree. If it's a
11:17:56 18	road in front of us. I mean, clearly. If we only	11:20:45 18	person all bloody on the side of the road, that's a
11:17:58 19	look at the road, we're probably bad drivers.	11:20:49 19	different situation than a -- a sign that's
11:18:00 20	You're scanning. Your eyes are scanning right to	11:20:51 20	advertising whatever, you know, some pretty
11:18:04 21	left, usually not up and down, but conceivably up	11:20:56 21	innocuous topic.
11:18:08 22	and down, but you're looking for the car that's	11:21:00 22	So there -- there's a difference there. In
11:18:10 23	coming out of the driveway that looks like he may	11:21:02 23	one case having a major distraction, a highly
11:18:12 24	not stop, doing those kinds of things.	11:21:06 24	attention-grabbing distraction off to the side of
11:18:14 25	So -- so to say that any kind of a	11:21:12 25	the road, yeah, would cause accidents, but I don't
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11:21:14 1 think of signs as being that type of a distraction.	11:33:10 1 roadway?
11:21:14 2 BY MS. BRILL:	11:33:11 2 A. Yeah, that's -- yes. That's the way I
11:21:26 3 Q. So you said there's little evidence	11:33:14 3 defined it for the purpose of this -- this report.
11:21:28 4 anywhere that signs cause -- cause accidents.	11:33:20 4 Maybe the word "distraction" can be questioned, but
11:21:31 5 That -- that's true for signs on bus	11:33:27 5 it -- clearly you can divide the time into two
11:21:33 6 shelters, correct?	11:33:29 6 pieces, two halves, two parts. I say one is a
11:21:36 7 A. I -- I would say yes on that, too. Yeah.	11:33:31 7 distraction, one is, you know, on-task viewing of
11:21:38 8 And I say "little evidence" -- I -- I can find no	11:33:34 8 the road. So it's an arbitrary definition, but
11:21:41 9 evidence. There's -- yeah, no evidence whatsoever.	11:33:37 9 that's how I defined it and then just used that
11:21:53 10 MS. BRILL: Should we take a short break?	11:33:39 10 definition.
11:21:55 11 MR. MOBLEY: Sure.	11:33:41 11 Q. Okay. And then if you can look at your
11:21:56 12 THE VIDEOGRAPHER: Off the record. The	11:33:45 12 report from the -- your declaration in the
11:21:57 13 time is 11:22.	11:33:50 13 preliminary injunction in the Metro Lights case,
11:31:00 14 (Brief recess.) -----	11:33:52 14 that was Exhibit 10. And you -- you refer there
11:31:01 15 THE VIDEOGRAPHER: Back on the record. The	11:34:03 15 to -- well, if you look, for example, at page 3,
11:31:46 16 time is 11:31.	11:34:06 16 line 16, you use the word "potential distraction."
11:31:46 17 BY MS. BRILL:	11:34:12 17 Do you see that?
11:31:52 18 Q. Mr. Kunzman, could you take a look at what	11:34:12 18 A. Yes.
11:31:54 19 we previously marked as Exhibit 9, which is the --	11:34:15 19 Q. Okay. And were you using the word
11:31:57 20 your 2007 report that we were discussing earlier.	11:34:19 20 "distraction" there in the same way?
11:32:04 21 A. Okay.	11:34:20 21 A. Yes, I think so.
11:32:06 22 Q. If you refer to the first page of your	11:34:42 22 Q. And then if you look at that same page,
11:32:11 23 report and you talk about the concept of	11:34:45 23 page 3, line 5, you talk about -- you use the word
11:32:14 24 distraction, which I think you were just discussing	11:34:49 24 "logically," the phrase "logically more
11:32:16 25 before we went off the break, and you say there:	11:34:52 25 distracting."
58	60
11:32:21 1 "In driving a vehicle one can	11:34:52 1 Did you also have the same definition of
11:32:23 2 divide all time into two	11:34:54 2 "distracting" there?
11:32:25 3 categories. The amount of time the	11:34:55 3 A. Yes.
11:32:26 4 driver spends looking directly at	11:34:57 4 Q. Going back to your December 2007 report,
11:32:28 5 the roadway and the amount of time	11:35:08 5 you have -- you have a "Conclusion" section toward
11:32:30 6 spent looking elsewhere as a	11:35:14 6 the end, page -- page 9 of the report.
11:32:32 7 distraction."	11:35:24 7 A. Okay.
11:32:33 8 Do you see that?	11:35:27 8 Q. And you -- your first conclusion is:
11:32:33 9 A. Yes.	11:35:29 9 "Not all driving
11:32:33 10 Q. And then it -- in the next paragraph you	11:35:30 10 distractions are significant
11:32:40 11 say:	11:35:32 11 distractions."
11:32:40 12 "If one were to study drivers	11:35:33 12 Can you explain that concept to me?
11:32:42 13 and every fraction of a second	11:35:34 13 A. Yes.
11:32:45 14 classify whether the driver's eyes	11:35:36 14 And I think the -- I believe I tried to
11:32:49 15 were on the road or looking at a	11:35:44 15 define a significant distraction versus a routine
11:32:51 16 distraction, it is clear that a	11:35:50 16 distraction.
11:32:53 17 sizable portion of the driver's	11:35:50 17 On page 2 of that same report it says
11:32:54 18 time is spent looking at things	11:35:53 18 "concept of significant distraction." The concept
11:32:57 19 other than a roadway."	11:35:55 19 of a significant distraction needs to be used in --
11:32:58 20 A. Yes, I see that.	11:35:58 20 in relation to classifying distraction.
11:32:59 21 Q. Do you see that?	11:36:01 21 So I said all distractions can be put in
11:32:59 22 And so is it fair to say that when you	11:36:05 22 two categories. One is -- as a significant
11:33:02 23 refer to the concept of driving, driver distraction,	11:36:08 23 distraction, one is a -- I mean, a casual
11:33:06 24 you're talking about the times when a driver is	11:36:11 24 distraction, if you want to use that.
11:33:08 25 placing his or her eyes at a location other than the	11:36:13 25 "Insignificant" is the word I used.
59	61

<p>11:36:14 1 So I said a significant distraction is one 11:36:17 2 that leads to traffic accidents. And that's the -- 11:36:20 3 the bloody -- the accident with whatever, somebody 11:36:24 4 lying on the ground. 11:36:25 5 And insignificant distraction is one that 11:36:27 6 cannot be shown to lead to traffic accidents. In 11:36:30 7 other words, you casually look at a sign or a tree 11:36:35 8 or a building or whatever. And those would be 11:36:38 9 insignificant distractions. 11:36:39 10 Q. Okay. 11:36:40 11 A. You look at them as you have time. As 11:36:42 12 you're driving, if there's nobody ahead of you for a 11:36:46 13 thousand feet and, you know, there's a beautiful 11:36:48 14 lake over on the side, you look at the lake, but you 11:36:52 15 don't have to look at the lake. You're not drawn to 11:36:55 16 it. 11:36:56 17 Where, you know, in the case of an 11:36:57 18 accident, I guess we -- we tend to look at them 11:37:01 19 whether we should or not. It's just the way some 11:37:04 20 people drive. 11:37:07 21 Q. Then going down to conclusion 2 of your 11:37:09 22 report on page 9 you say: 11:37:10 23 "To merely label something 11:37:12 24 as a distraction is not 11:37:13 25 meaningful."</p> <p style="text-align: right;">62</p>	<p>11:38:26 1 Do you see that? 11:38:26 2 A. Yes. 11:38:34 3 Q. I'd like to understand the -- is a 11:38:38 4 dangerous condition the same thing as a significant 11:38:43 5 distraction or is there -- is there a difference 11:38:47 6 there? 11:38:47 7 A. I probably would hesitate to -- to say 11:38:50 8 all -- all -- all significant distractions are 11:38:53 9 dangerous conditions. I suppose it depends on the 11:38:56 10 situation, you know, how many cars are in front of 11:39:00 11 you and the speed and some of those things. So I -- 11:39:04 12 I wouldn't want to go quite that far. 11:39:06 13 Q. Were you referring to "dangerous condition" 11:39:08 14 here as something more extreme than a significant 11:39:11 15 distraction? 11:39:11 16 A. I -- I was -- I was trying to use the legal 11:39:14 17 term "dangerous condition," which is, you know, 11:39:17 18 pretty -- it's not -- well, as you know. But you 11:39:22 19 can't just say, well, that looks like a dangerous 11:39:24 20 condition to me. I mean, it's got to have more than 11:39:26 21 just, gee, I can imagine that might somehow, 11:39:30 22 somewhere, once cause, you know, a near miss or 11:39:35 23 whatever. It's got to be more than that. 11:39:37 24 You have to have a history. A 11:39:40 25 demonstrable -- I think there's like eight sections</p> <p style="text-align: right;">64</p>
<p>11:37:13 1 Do you agree with that statement? 11:37:16 2 A. Well, yes, I do. Maybe the choice of words 11:37:21 3 is -- I think my meaning -- I'm saying a distraction 11:37:27 4 is what everything is. But I think my point is, is 11:37:29 5 just to say something is a distraction, you have to 11:37:31 6 fine-tune it. You have to slice it and dice it, so 11:37:36 7 to speak, a little finer than that, because some 11:37:40 8 distractions are insignificant; others are 11:37:42 9 significant. 11:37:42 10 Q. And signs fall in with the insignificant 11:37:45 11 distraction? 11:37:46 12 A. Yes, that's -- that's the way I would 11:37:49 13 classify them, yes. 11:37:57 14 Q. And that includes bus shelter signs, 11:37:57 15 correct? 11:37:57 16 A. Yes. 11:38:04 17 Q. And signs on kiosks in the public 11:38:05 18 right-of-way? 11:38:06 19 A. Yeah, the -- yes. 11:38:08 20 Q. Okay. All right. 11:38:15 21 Now, you -- turn to pages 3 through 6 of 11:38:17 22 your 2007 report. You -- I'm sorry, before we get 11:38:21 23 there I wanted to ask one other distinction. 11:38:23 24 You refer on page 10, in conclusion 10, to 11:38:26 25 the concept of a dangerous condition.</p> <p style="text-align: right;">63</p>	<p>11:39:42 1 of the definition of "dangerous condition," but one 11:39:44 2 of them just doesn't meet standards. 11:39:48 3 You know, if a design standard has been -- 11:39:51 4 has not been met and it's reasonable to assume that 11:39:54 5 not meeting that design standard's going to lead to 11:39:57 6 an accident, that -- that alone is -- is a dangerous 11:39:59 7 condition. 11:40:00 8 The notice which, you know, how many 11:40:04 9 accidents have there been or how many -- how many 11:40:08 10 reports where someone calls in and says, I think the 11:40:17 11 street -- I think the street is a dangerous 11:40:17 12 condition because of the stop sign at -- you know, 11:40:17 13 at so-and-so street, you can hardly see it, those 11:40:19 14 kinds of things are all -- that's notice. 11:40:21 15 So to have a dangerous condition, you need 11:40:24 16 notice, which can be either accident or someone 11:40:26 17 calling in. And just because someone calls in 11:40:31 18 doesn't mean you have notice. But at least there's 11:40:34 19 notice that something might be wrong. It needs to 11:40:36 20 be investigated. And there's like eight different 11:40:38 21 ways you can have a dangerous condition. 11:40:40 22 So I was trying to just bring up there's 11:40:45 23 the legal definition of a dangerous condition and 11:40:47 24 that's why -- that's why I -- I used those words. 11:40:49 25 Q. I see.</p> <p style="text-align: right;">65</p>

11:40:50 1	A. I didn't try to link it to significant	11:43:09 1	MR. MOBLEY: Okay.
11:40:53 2	distraction.	11:43:11 2	MS. BRILL: This is the other study.
11:40:55 3	Q. Okay. So something could be a significant	11:43:20 3	(The document referred to was
11:40:56 4	distraction, but still not rise to the level of a	11:43:20 4	marked for identification by the
11:40:59 5	dangerous condition?	11:43:20 5	C.S.R. as Exhibit 13 and attached
11:40:59 6	A. Yeah. I think if the nearest car is a	11:43:21 6	to this deposition.)
11:41:02 7	thousand feet in front of you and it's a straight	11:43:21 7	BY MS. BRILL:
11:41:04 8	road and it's -- you know, you're going a reasonable	11:43:22 8	Q. Can you take a look at Exhibit 13 which is
11:41:07 9	speed and there's a significant distraction, you	11:43:30 9	titled "The Role of Driver Distraction in Traffic
11:41:11 10	know, and you look, I think that doesn't mean it's a	11:43:34 10	Crashes" dated May 2001?
11:41:17 11	dangerous condition at that moment.	11:43:38 11	A. Yes. I've looked at it and that is the
11:41:17 12	But the same situation except put a bunch	11:43:40 12	study I believe I referred to.
11:41:18 13	of cars, stop-and-go traffic and perhaps the driver	11:43:43 13	Q. This AAA study?
11:41:21 14	going a little bit too quick to begin with, well,	11:43:45 14	A. Yes, the AAA study. Looks like it's
11:41:24 15	then you have a dangerous condition.	11:43:47 15	complete to me.
11:41:25 16	Q. So where you say this is a legal	11:43:48 16	Q. Okay. Did you review the AAA study in
11:41:29 17	definition, is that from a -- from the Code of	11:43:56 17	detail?
11:41:31 18	Public Works or where -- what -- what -- what area	11:43:56 18	A. Yes.
11:41:35 19	of law do you find that definition?	11:43:57 19	Q. And did you review the Anderson study in
11:41:39 20	A. Oh, I guess it's what, the Civil Code, I	11:43:59 20	detail?
11:41:42 21	believe. But I didn't necessarily pull the code out	11:43:59 21	A. Yes.
11:41:44 22	and say, okay, here's -- here's the eight possible	11:44:00 22	Q. And did you find the methodology of those
11:41:47 23	ways, you know, 830-point whatever it is. I didn't	11:44:03 23	studies to be correct with respect to determining
11:41:50 24	do that.	11:44:07 24	whether something was unsafe?
11:41:50 25	But on the other hand, I try to	11:44:10 25	A. The -- I believe the methodologies were
	66		68
11:41:52 1	distinguish. There is -- there is a legal concept	11:44:17 1	valid. Yeah, if you wanted to spend a billion
11:41:55 2	of what a dangerous condition is.	11:44:20 2	dollars, you could undoubtedly improve upon either
11:41:57 3	Q. But is it a term that applies to traffic in	11:44:23 3	of them, but I think they -- they presented their
11:42:00 4	particular as opposed to --	11:44:25 4	case -- or they presented their evidence, their
11:42:02 5	A. No, I don't -- no, it's -- as far as I	11:44:28 5	basis of their opinions and -- and to me, quite
11:42:03 6	know, it applies to any -- any situation. Just not	11:44:32 6	convincingly showed that there's really no -- no
11:42:10 7	traffic, no. It's -- it's whether it's -- it	11:44:37 7	link where you can say, well, signs are causing
11:42:12 8	applies across the board to a lot of conditions.	11:44:42 8	accidents. I don't think either study concluded
11:42:22 9	Q. Okay. So going back to the question I	11:44:44 9	signs -- well, they both concluded signs are
11:42:25 10	began earlier, you refer in this 2007 report on	11:44:48 10	basically not a significant factor.
11:42:31 11	pages 3 to 6 to certain studies that showed no	11:44:49 11	Q. And they reviewed actual traffic accident
11:42:37 12	statistical correlation between the presence of	11:44:53 12	data, correct?
11:42:42 13	certain signs and traffic accidents.	11:44:54 13	A. Yes.
11:42:42 14	Is that correct?	11:44:55 14	Q. And they reviewed that -- that data over
11:42:42 15	A. Yes.	11:44:58 15	long periods of time, correct?
11:42:45 16	Q. And that was -- one of those studies was	11:44:58 16	A. Yes.
11:42:46 17	the Anderson study?	11:45:01 17	Q. And the amount of data they reviewed was
11:43:03 18	A. Yes.	11:45:06 18	statistically significant?
11:43:03 19	MS. BRILL: 12?	11:45:07 19	A. Oh, I believe so, yes. It was a lot of
11:43:03 20	THE REPORTER: 13.	11:45:09 20	data.
11:43:04 21	MS. BRILL: Ask the court reporter to mark	11:45:09 21	Q. That enabled them to draw conclusions that
11:43:05 22	this as Exhibit 13, please.	11:45:13 22	were not speculative, correct?
11:43:07 23	MR. MOBLEY: Is that the Anderson study? I	11:45:15 23	A. That's my opinion.
11:43:08 24	think it's been marked.	11:45:16 24	Q. When did you first become aware of these
11:43:09 25	MS. BRILL: No, this is the AAA study.	11:45:18 25	studies?
	67		69

<p>11:45:19 1 A. Probably in -- the Anderson study I know is 11:45:23 2 back in 2004. At least I believe that's when I saw 11:45:26 3 it first for that 2004 report. 11:45:29 4 The AAA one, I don't think I had it in 11:45:37 5 2004. I believe it was closer to 2007. I don't 11:45:43 6 recall when exactly. 11:45:43 7 Q. Do you disagree with anything in the 11:45:45 8 methodology that they used? 11:45:46 9 MR. MOBLEY: Objection. Are you asking 11:45:47 10 every -- every statement in both of these documents? 11:45:51 11 That's pretty general. 11:45:52 12 MS. BRILL: No, I was asking the 11:45:53 13 methodology, the general approach -- 11:45:53 14 MR. MOBLEY: Okay. 11:45:55 15 MS. BRILL: --that they took to the 11:45:56 16 analysis that they were doing. 11:45:59 17 THE WITNESS: I think the -- the -- the 11:46:01 18 general methodology and the general approach they 11:46:04 19 took were valid approaches, yeah. I didn't see 11:46:08 20 anything I had problems with. 11:46:08 21 BY MS. BRILL: 11:46:09 22 Q. Okay. 11:46:10 23 A. You know, in general. 11:46:19 24 Q. And so you don't consider the large signs 11:46:20 25 that were studied in -- in these reports to be</p>	<p>11:47:45 1 big if it's three inches from my eye, but, of 11:47:48 2 course, if I look at somebody's hand, you know, 11:47:49 3 across the street, it looks very small. It's the 11:47:52 4 same object. 11:47:52 5 So the same concept applies. You have a 11:47:54 6 very large sign, but far away, and that has less 11:47:57 7 target in your -- in your retina than does a -- a 11:48:01 8 smaller sign up closer. That's what I'm trying to 11:48:04 9 get at. 11:48:05 10 MS. BRILL: So I'm going to move to strike 11:48:08 11 everything after "I don't consider them hazards" as 11:48:11 12 nonresponsive. 11:48:12 13 Q. Let me get back to my question. 11:48:14 14 When -- what you testified earlier that the 11:48:18 15 large signs in -- in the AAA study, in the AAA 11:48:23 16 report and the Anderson report, you didn't regard 11:48:26 17 them as traffic hazards, correct? 11:48:28 18 A. Yes, that's correct. 11:48:29 19 Q. Okay. And then -- so when you say in your 11:48:31 20 report that the CBS Decaux signs are as significant 11:48:38 21 a traffic hazard as much larger signs, you don't 11:48:40 22 mean to say that you've concluded that the CBS 11:48:44 23 Decaux signs are traffic hazards, correct? 11:48:46 24 A. That is correct. I do not consider them 11:48:48 25 traffic hazards.</p>
<p>11:46:24 1 traffic hazards, correct? 11:46:26 2 A. There's no evidence they are. 11:46:32 3 Q. So I'd like you to look at page 9 of your 11:46:34 4 2007 report. And conclusion 3 you say in there 11:46:42 5 that -- you refer to CBS Decaux signs and you say 11:46:42 6 that they are: 11:46:50 7 "As significant a traffic 11:46:52 8 hazard as much larger signs 11:46:54 9 maintained further from traffic 11:46:56 10 lanes." 11:46:56 11 Do you see that? 11:46:56 12 A. Yes. 11:46:57 13 Q. But that doesn't mean that you've concluded 11:46:59 14 that the CBS Decaux signs are actually traffic 11:47:06 15 hazards, correct? 11:47:07 16 A. That -- yes, that's -- that's correct. I 11:47:08 17 don't consider them hazards. But if you were to try 11:47:10 18 to somehow rank the distraction potential, whatever 11:47:16 19 you might want to call it, if you were to try to 11:47:17 20 rank it, the -- the signs very close to the street 11:47:20 21 would have a bigger distraction factor than signs 11:47:24 22 further away, based on the cone -- the cone concept, 11:47:29 23 cone of -- cone of vision concept and the -- the 11:47:37 24 apparent size in the -- in the retina, the apparent 11:47:41 25 size of an object. You know, a hand looks really</p>	<p>11:48:49 1 Q. In this paragraph 3 on page 9 you refer to 11:49:06 2 much larger signs. 11:49:07 3 Were you speaking there of specific larger 11:49:10 4 signs? 11:49:16 5 A. No, just the -- the general concept of a 11:49:18 6 much larger sign. 11:49:19 7 Q. And when you referred previously to -- so 11:49:31 8 you haven't ever compared the relative traffic 11:49:35 9 safety of any particular CBS Decaux sign to any 11:49:38 10 particular much larger sign. 11:49:40 11 Is that correct? 11:49:44 12 A. It's probably correct. I'm not sure that's 11:49:45 13 true. If -- If I did it's in the -- it's in the 11:49:47 14 2004 report and I'm not sure if I did that there or 11:49:51 15 not. 11:50:19 16 Q. And when -- when you're talking about CBS 11:50:24 17 Decaux signs in this paragraph 3, are you talking 11:50:26 18 about particular locations? 11:50:27 19 A. Yes, to the extent of the ones that -- you 11:50:33 20 know, that are -- that are on the streets in -- in 11:50:38 21 the city of Los Angeles, referring to them as a -- a 11:50:40 22 group, yes. I'm not referring to them in some other 11:50:44 23 city, no. 11:50:45 24 Q. But are you referring to a particular 11:50:46 25 location or -- or --</p>

<p>11:50:51 1 A. Not -- I'm referring to the -- the -- call 11:50:56 2 it a concept of where they're placed, and -- and 11:50:58 3 there's many -- many examples of where they have 11:51:02 4 been replaced or -- maybe not many, but several 11:51:05 5 examples. 11:51:06 6 So I'm referring to them in -- in the 11:51:09 7 general -- the general sign that's -- that's seen 11:51:15 8 in -- in those locations, the billboards -- I mean, 11:51:18 9 the bus stops and the kiosks and the -- I guess, 11:51:21 10 restrooms. 11:51:23 11 Q. Have you surveyed all of the CBS Decaux bus 11:51:28 12 shelter stops? 11:51:29 13 A. Probably not. 11:51:30 14 Q. Do you know approximately how many you've 11:51:32 15 looked at? 11:51:33 16 A. I've looked at a few. I -- probably four 11:51:36 17 or five or that range. I don't know how many there 11:51:40 18 are. And there probably is more now than there was 11:51:44 19 then. So I didn't survey them all. Didn't attempt 11:51:48 20 to. 11:51:48 21 Q. Do you have any -- do you consider 11:51:50 22 review -- looking at four to five to be a 11:51:53 23 statistically significant sample? 11:51:55 24 MR. MOBLEY: Objection. Vague and 11:51:57 25 ambiguous. Incomplete hypothetical. Sample of</p>	<p>11:53:13 1 than the signs further away. That was my 11:53:16 2 conclusion. 11:53:19 3 Q. Did you do anything to determine whether 11:53:21 4 the four or five bus shelter signs that you looked 11:53:24 5 at were representative of CBS Decaux signs 11:53:29 6 throughout the city? 11:53:33 7 MR. MOBLEY: Objection. Vague and 11:53:33 8 ambiguous as to the term "representative." 11:53:33 9 THE WITNESS: I -- I sampled -- no, I won't 11:53:38 10 say I -- I attempted to determine if this is the -- 11:53:41 11 no, I did not attempt to establish that these were 11:53:46 12 exactly representative of all signs, CBS signs in 11:53:50 13 the city. I did not do that. 11:53:50 14 BY MS. BRILL: -- 11:53:52 15 Q. Now, you were speaking just now of the 11:53:54 16 impact on the retina of a bus shelter sign when the 11:53:59 17 driver's fairly close to it compared to a much 11:54:03 18 larger sign farther away. 11:54:05 19 Do you recall that? 11:54:05 20 A. Yes. 11:54:05 21 Q. And as you approach the much larger sign 11:54:07 22 and get within the same distance of it as you were 11:54:10 23 to a bus shelter, that larger sign would have a 11:54:13 24 larger impact on the retina, correct? 11:54:15 25 A. Well --</p>
<p>11:52:01 1 what? 11:52:01 2 BY MS. BRILL: 11:52:04 3 Q. Sample of CBS Decaux signs. 11:52:08 4 MR. MOBLEY: Again, object that it's an 11:52:10 5 incomplete hypothetical. And Vague and ambiguous. 11:52:12 6 THE WITNESS: If the -- if the four or five 11:52:13 7 were representative of typical CBS signs, then -- 11:52:19 8 then, you know, then I suppose a sample is -- is -- 11:52:23 9 is representative. 11:52:23 10 If I happen to have seen only a few signs 11:52:26 11 that were non-representative, then that's fine. But 11:52:29 12 as far as the ones I saw, there -- you know, I 11:52:35 13 just -- as far as the ones I saw, that's what I saw. 11:52:37 14 They're close to the curb face. And when you 11:52:41 15 compare those signs to a sign further away from the 11:52:44 16 curb face, you know, hundreds of feet away, there's 11:52:47 17 a difference. There's a difference in the -- the 11:52:51 18 target valve in the eye. 11:52:53 19 Again, your hand held this far from your 11:52:54 20 face versus a bigger object held much further away 11:52:58 21 is still impacting the -- your retina, the size of 11:53:01 22 the image on your retina. The target on your retina 11:53:06 23 is the same. It could be the same, or in the case 11:53:08 24 of the -- the bus shelter signs that I looked at, 11:53:11 25 they were actually larger. Larger image than --</p>	<p>11:54:15 1 MR. MOBLEY: Objection. Calls for 11:54:18 2 speculation. 11:54:18 3 THE WITNESS: Yeah, and at some point 11:54:21 4 you've got to -- you've got to define how you're 11:54:24 5 going to measure them. And -- and I said, okay, 11:54:27 6 what's the 15-degree -- when you're within the 11:54:30 7 15-degree cone, how -- how big does the sign look to 11:54:34 8 your -- your eye at that point. That's how I did 11:54:37 9 it. 11:54:37 10 So I used the 15 degrees, and then said how 11:54:40 11 big at 15 degrees. When it's right on that 11:54:45 12 15-degree boundary, how big does that sign look then 11:54:48 13 compared to another sign at 15 degrees but that's -- 11:54:50 14 you know, further away, substantially further away 11:54:54 15 from the curb. That's how I did it. 11:55:00 16 BY MS. BRILL: 11:55:00 17 Q. That was -- and was that a -- this is -- 11:55:02 18 you're talking now about 2004? 11:55:03 19 A. Yes. 11:55:04 20 Q. And did you update that survey, that survey 11:55:07 21 that you did in 2007? 11:55:09 22 A. No. 11:55:10 23 Q. Have you updated it any time after 2004? 11:55:14 24 A. No. 11:55:15 25 Q. And that -- did that survey include large</p>

11:55:18 1 signs or just size -- signs that were the same size	11:58:21 1 have.
11:55:25 2 as the bus shelter signs?	11:58:21 2 If you use the 15 degree criteria, as to
11:55:27 3 A. They --	11:58:25 3 when you look at something or when your eye sees it,
11:55:27 4 Q. I think it's attached as an attachment to	11:58:32 4 you know, the conclusion is -- is just because a
11:55:30 5 Exhibit 10.	11:58:34 5 sign is large and far away doesn't mean it's --
11:55:46 6 A. Yes. So on -- on table 1, basically I	11:58:37 6 it's -- It's more distracting than a sign up closer.
11:55:48 7 found seven outdoor media signs and nearby bus	11:58:40 7 Q. But you've never made any studies to
11:55:54 8 shelters roughly at the same place and just -- just	11:58:42 8 determine how large a billboard is when it's within
11:55:57 9 paired them that way is how I did it.	11:58:47 9 the 15-degree cone of vision, correct?
11:56:00 10 Q. What did you -- what did you mean here by	11:58:50 10 A. That's correct.
11:56:02 11 the term "outdoor media sign"?	11:59:06 11 Q. Is -- is the data that you collected on
11:56:04 12 A. I guess, the -- well, these would be --	11:59:09 12 signs in 2004, did you attach all of that material
11:56:11 13 these would be, call it private signs versus street	11:59:14 13 to your 2004 report?
11:56:15 14 furniture signs or versus the bus stop signs. Signs	11:59:17 14 A. The -- yes. The -- I believe, yes.
11:56:18 15 that were on, say, adjacent buildings or on posts	11:59:23 15 Q. That's -- the 2004 report is Exhibit 10.
11:56:21 16 near a building. That type of thing is what I used.	11:59:28 16 A. What -- what's missing at this point --
11:56:24 17 Q. And -- and were they the signs that Metro	11:59:30 17 missing as far as in my files is the photographs.
11:56:27 18 Lights owned?	11:59:35 18 And so I'm not quite sure what you asked, your
11:56:28 19 A. I -- I'm not sure. I don't recall that.	11:59:40 19 question, but the photographs is missing, but the
11:56:31 20 It may have been. I don't recall.	11:59:42 20 rest of it is here, the tables, which really show --
11:56:34 21 Q. But the -- they were approximately 67	11:59:48 21 you know, the tables pretty well speak for
11:56:38 22 inches by 45 inches as reflected here?	11:59:49 22 themselves. The summarize. The photographs is --
11:56:42 23 A. Yes.	11:59:52 23 is just another -- background information, but the
11:56:44 24 Q. Okay. So these were not large-scale	11:59:54 24 tables is really what I --
11:56:47 25 billboards?	11:59:58 25 Q. Who took the photographs?
78	80
11:56:48 1 A. That's correct.	12:00:00 1 A. I did. I took the photographs and prepared
11:56:50 2 Q. And those are the same signs that you	12:00:00 2 the tables.
11:56:52 3 looked at when you -- if you get to table 2 of that	12:00:00 3 Q. And how did you decide what to photograph?
11:56:55 4 exhibit? Those are the same signs?	12:00:04 4 A. That -- the list of signs or the locations
11:56:57 5 A. Yes. Same -- well, the same -- yes.	12:00:06 5 was suggested to me by -- by Paul Fisher. And I
11:57:00 6 Q. So in 2004, you didn't compare bus shelter	12:00:11 6 believe it was a relatively -- well, let's just say
11:57:03 7 signs to large billboards, correct?	12:00:16 7 he suggested them.
11:57:03 8 A. No.	12:00:19 8 Q. And you went with his suggestions?
11:57:06 9 Q. And you didn't do that in 2007?	12:00:21 9 A. Yes.
11:57:09 10 A. That's correct.	12:00:25 10 Q. And he was counsel for Metro Lights?
11:57:09 11 Q. Okay. And you haven't done that since?	12:00:26 11 A. I believe so.
11:57:12 12 A. I haven't done it since. That's correct.	12:00:35 12 Q. And you didn't collect any additional data
11:57:13 13 Q. Okay. Have you ever collected any data to	12:00:36 13 in preparing your 2007 report?
11:57:43 14 determine whether bus shelters in L.A. are more or	12:00:41 14 A. As far as measurements, no. No.
11:57:46 15 less distracting than the large billboards in the	12:00:48 15 Q. Did you collect any other data other than
11:57:50 16 Anderson or AAA study?	12:00:52 16 measurements?
11:57:52 17 A. I have not personally collected data, no.	12:00:53 17 A. No, just -- I saw the signs, but I didn't
11:57:57 18 Q. Okay. And do you know of any data on that	12:00:56 18 try to measure them. Pretty hard to measure those
11:58:01 19 topic?	12:00:58 19 signs. It's not an easy task and how far they
11:58:01 20 A. I -- I don't.	12:01:01 20 are -- they are away from where you are.
11:58:03 21 Q. Do you have any opinion on that topic?	12:01:54 21 Q. Okay. Let's go to your Metro Lights
11:58:04 22 A. Well, it comes -- sort of my -- my theme	12:01:59 22 report, Exhibit 10, I believe.
11:58:09 23 here today is -- is a sign that's -- a smaller sign	12:02:03 23 A. Yes, Exhibit 10.
11:58:14 24 up close to a street is -- is -- has more target	12:02:06 24 Q. Your declaration there.
11:58:17 25 value on the eye than a large sign further away can	12:02:09 25 MR. MOBLEY: Counsel, excuse me, do you
79	81

12:02:09 1	have copies of that exhibit?	12:04:58 1	Do you see that?
12:02:11 2	MS. BRILL: Yes, yeah.	12:04:58 2	A. Yes. "Lanes of traffic."
12:02:13 3	MR. MOBLEY: If I could get that, as well	12:05:00 3	Q. So does this refresh your recollection that
12:02:17 4	as the Pamela Anderson report, number 12.	12:05:02 4	the -- the -- what you referred to as outdoor media
12:02:23 5	MS. BRILL: Sure.	12:05:08 5	signs were all Metro Lights signs?
12:02:23 6	MR. MOBLEY: Thanks.	12:05:10 6	A. Yes, it does.
12:02:25 7	MS. BRILL: Actually, let's -- why don't we	12:05:18 7	Q. In preparing this 2004 report, did you do
12:02:26 8	remark it as a new exhibit because I think we may	12:05:20 8	anything else to determine the relative effect on
12:02:28 9	have the --	12:05:22 9	traffic safety of the Metro-Lights signs and the
12:02:47 10	(Pause in proceedings.)	12:05:24 10	adjacent bus shelters?
12:03:07 11	MS. BRILL: Let's -- let's mark this as	12:05:26 11	MR. MOBLEY: I'm sorry, anything other
12:03:13 12	Exhibit 14, please.	12:05:27 12	than?
12:03:13 13	(The document referred to was	12:05:27 13	MS. BRILL: Other than measuring the
12:03:13 14	marked for identification by the	12:05:29 14	distance of each sign from the curb side and
12:03:13 15	C.S.R. as Exhibit 14 and attached	12:05:34 15	adjacent lanes of traffic.
12:03:28 16	to this deposition.)	12:05:35 16	THE WITNESS: And photographing the signs
12:03:28 17	BY MS. BRILL:	12:05:38 17	and preparing tables 1 and 2. Those -- that's --
12:03:28 18	Q. So Exhibit -- Exhibit 14 -- yeah,	12:05:39 18	those -- that's all I did, yes.
12:03:31 19	Exhibit 14 is -- has two caption pages. First it	12:05:39 19	BY MS. BRILL:
12:03:35 20	says "Declaration of William Kunzman, Submitted in	12:05:41 20	Q. You didn't collect any other data?
12:03:38 21	Support of Motion for Partial Summary Judgment."	12:05:42 21	A. No.
12:03:40 22	And then behind that it says "Declaration of William	12:05:46 22	Q. Have you done so since that time?
12:03:43 23	Kunzman in Support of Motion for Preliminary	12:05:48 23	A. No.
12:03:53 24	Injunction."	12:05:51 24	Q. Did you collect -- so you didn't collect
12:03:53 25	Do you see that?	12:05:53 25	data on whether drivers tend to look at bus shelter
82		84	
12:03:53 1	A. Yes.	12:05:55 1	signs while they're moving versus while they're
12:03:53 2	Q. Were you aware that your original	12:05:58 2	stopped at a stoplight, correct?
12:03:53 3	declaration on the preliminary injunction motion was	12:05:58 3	A. No.
12:03:53 4	being submitted again to the Court in support of a	12:06:00 4	Q. Have you done so since that time?
12:03:54 5	motion for partial summary judgment?	12:06:01 5	A. No.
12:03:56 6	A. Yes, I -- I believe I was aware of that.	12:06:06 6	Q. Other than your own data, did you look at
12:04:00 7	Q. And this -- are these the photographs that	12:06:08 7	anyone else's data on that topic?
12:04:02 8	start at Exhibit D?	12:06:10 8	A. No.
12:04:05 9	A. Yes.	12:06:12 9	Q. And have you ever done so?
12:04:05 10	Q. D and E that you took?	12:06:13 10	A. No. Not -- not with this purpose in mind.
12:04:07 11	A. Yes.	12:06:19 11	I -- I don't recall ever seeing any data on that. I
12:04:08 12	Q. Okay. And those are the ones suggested by	12:06:22 12	don't think I've seen data on that.
12:04:18 13	Mr. Fisher?	12:06:24 13	Q. And did you collect -- back in 2004, did
12:04:18 14	A. The locations were, yes.	12:06:27 14	you collect any data on whether drivers tend to look
12:04:33 15	Q. Now looking at paragraph 5 of your -- of	12:06:31 15	at the Metro Lights signs while they're moving
12:04:38 16	this declaration, page 2?	12:06:37 16	versus while they're stopped at a stoplight?
12:04:39 17	A. Okay.	12:06:39 17	A. No.
12:04:43 18	Q. It says:	12:06:39 18	Q. And have you done that since that time?
12:04:44 19	"In order to determine the	12:06:41 19	A. No.
12:04:45 20	relative effect on traffic safety	12:06:47 20	Q. Back in 2004, did you collect any data on
12:04:48 21	of the Metro Lights sign and the	12:06:49 21	how much time the driver spent looking at each bus
12:04:49 22	adjacent bus shelter, I measured	12:06:52 22	shelter sign?
12:04:51 23	the distance of each sign from the	12:06:52 23	A. No.
12:04:54 24	curb side to the adjacent lines of	12:06:53 24	Q. Have you done that since that time?
12:04:56 25	traffic."	12:06:55 25	A. No.
83		85	

12:06:56 1	Q. Are you aware of any data on that topic?	12:09:09 1	sign and when you don't, you know, you've got -- if
12:06:58 2	A. No.	12:09:13 2	you don't come up with a definition of when you see
12:07:04 3	Q. Did you collect any data on how much time	12:09:15 3	a sign or when you don't, you don't have a
12:07:07 4	drivers spent looking at any non-bus shelter signs?	12:09:18 4	meaningful study.
12:07:10 5	A. No.	12:09:19 5	You've got to somehow define, okay, this is
12:07:11 6	Q. And are you aware of any data on that	12:09:22 6	when you -- this is the point at which you see a
12:07:13 7	topic?	12:09:24 7	sign and -- and, of course, the sign grows in your
12:07:13 8	A. No, I'm not.	12:09:27 8	eye as you get closer to it.
12:07:17 9	Q. Did you collect any data on whether drivers	12:09:29 9	So you have to come up with some common
12:07:19 10	were able to see the bus shelter signs while looking	12:09:32 10	definition kind of a yardstick. If you don't have a
12:07:23 11	straight ahead and attending to traffic?	12:09:34 11	yardstick, it's pretty hard to measure things.
12:07:26 12	A. No.	12:09:36 12	So that was my yardstick, the 15-degree
12:07:30 13	Q. And have you done so since that time?	12:09:39 13	cone. And then I -- pardon me -- I backed in --
12:07:31 14	A. No, I have not.	12:09:43 14	backed in from that concept of where -- you know,
12:07:32 15	Q. Did you collect any data on whether drivers	12:09:47 15	how -- well, I backed into the fact that that's when
12:07:35 16	were able to see the outdoor media signs, the	12:09:52 16	you saw the sign.
12:07:39 17	non-bus shelter signs, without moving their heads to	12:09:53 17	And as I said, you saw it when it was at
12:07:42 18	the side?	12:09:57 18	the 15-degree cone boundary.
12:07:42 19	A. No.	12:09:58 19	Q. So you measured when you see the sign?
12:07:43 20	Q. Have you done so since that time?	12:10:01 20	A. Well, mathematically. If one sign is -- is
12:07:48 21	A. Basically moving their heads, I'm using the	12:10:06 21	30 feet from the road and another sign is two feet
12:07:48 22	15-degree cone as my basis, but no, I have not	12:10:08 22	from the road, the -- the cone of when you see the
12:07:51 23	collected that data beyond what I just said.	12:10:12 23	sign, when it hits the 15-degree point, is going to
12:07:52 24	Q. Did you collect any data on traffic	12:10:16 24	be larger on, say, the sign two feet from the
12:07:54 25	accidents at these locations?	12:10:18 25	roadway than the one 30 feet from the roadway.
86		88	
12:07:55 1	A. No, I did not.	12:10:21 1	So I didn't measure when you saw it. I
12:07:58 2	Q. Have you made any study of -- of traffic	12:10:23 2	measured the distance and then said, okay, if you
12:08:02 3	flow at bus stops with bus shelters versus bus stops	12:10:25 3	use the 15-degree cone, this is when -- this is how
12:08:07 4	without bus shelters?	12:10:29 4	big the sign looks and also when presumably you
12:08:08 5	A. No.	12:10:31 5	would be seeing it.
12:08:13 6	Q. Have you ever done so?	12:10:32 6	Q. On page 2 of your 2004 report you say you
12:08:14 7	A. No.	12:10:36 7	were retained to conduct an inspection of signs to
12:08:14 8	Q. Have you ever made a study of traffic	12:10:41 8	determine whether they may constitute a traffic
12:08:15 9	safety at bus stops with bus shelters versus bus	12:10:43 9	hazard.
12:08:19 10	stops without bus shelters?	12:10:44 10	Do you see that?
12:08:20 11	A. No.	12:10:44 11	A. Yes. Which -- which line are you on?
12:08:23 12	Q. And have you ever made a study of traffic	12:10:46 12	Q. Lines 2 to 3.
12:08:27 13	safety or traffic flow at bus stops with advertising	12:10:46 13	A. Yes.
12:08:30 14	versus bus stops without advertising?	12:10:49 14	Q. Okay. Are you aware of any studies that --
12:08:32 15	A. No.	12:10:55 15	how -- so how -- are you aware of any studies that
12:08:38 16	Q. Have you ever made any study of whether	12:10:57 16	indicate that measuring the distance between the
12:08:39 17	drivers look at bus shelters more if they have	12:11:02 17	sign and the lanes of traffic is -- correlates with
12:08:42 18	advertising on them than when they do not?	12:11:09 18	a sign being a traffic hazard?
12:08:44 19	A. No, I've not studied that.	12:11:10 19	A. No. This -- this -- this is kind of
12:08:48 20	Q. How did you come up with the methodology of	12:11:14 20	ground-breaking stuff here in the sense that I'm not
12:08:50 21	measuring distance from traffic lanes that you used	12:11:17 21	sure if anybody had ever done this type of -- of
12:08:56 22	in the -- in preparing your Metro Lights report?	12:11:20 22	analysis before.
12:08:58 23	A. Well, as I've said before, I -- I used the	12:11:22 23	So when I determined a methodology, I --
12:09:03 24	15-degree cone. It turns out if you don't have --	12:11:26 24	you know, I determined pretty quickly you'd have to
12:09:06 25	if you don't make a definition of when you see a	12:11:29 25	make some definition of when you see a sign. I
87		89	

12:11:31 1	chose the 15-degree cone. You could have used 20	12:13:46 1	A. I would -- I would say yes to the extent
12:11:35 2	degrees or some other degree, but 15 is -- happens	12:13:51 2	that, as I said, the custom and practice in traffic
12:11:37 3	to be one traffic people use for signs, you know,	12:13:55 3	engineering is keep your signs within 15 degrees,
12:11:43 4	directional signs.	12:13:58 4	your road signs, so they'll be seen. And if you --
12:11:43 5	And once you pick your measurement, once	12:14:02 5	the -- another half of that same thought process is
12:11:46 6	you define your yardstick, then everything else	12:14:05 6	if -- if the signs are too small to read within 15
12:11:49 7	mathematically basically falls into place.	12:14:09 7	degrees or hard to -- they're not going to be
12:11:51 8	Q. And are you aware of any studies that	12:14:11 8	noticed. And so sort of one goes with the other.
12:11:54 9	support the notion that -- that that yardstick that	12:14:16 9	If you see it, you see it. If -- If you
12:11:57 10	you chose correlates with traffic accidents?	12:14:20 10	don't, if you violate the 15-degree cone principle,
12:12:00 11	A. The -- no. Not -- not with traffic	12:14:23 11	it's less likely to be seen or less likely to be
12:12:05 12	accidents.	12:14:27 12	read in the case of a road sign.
12:12:06 13	Q. With traffic -- okay. Thank you.	12:14:28 13	Q. Sorry to interrupt. I didn't mean to. Did
12:12:08 14	A. About to answer the wrong question.	12:14:31 14	you finish your answer?
12:12:09 15	Q. Thank you.	12:14:32 15	A. Yes.
12:12:10 16	Okay. And so what -- what led you to	12:14:33 16	Q. In order to see a sign that's outside the
12:12:24 17	believe that it correlates with traffic accidents or	12:14:35 17	15-degree cone, it's more likely you'll have to turn
12:12:26 18	traffic safety?	12:14:37 18	your head away from traffic, correct?
12:12:28 19	MR. MOBLEY: Which -- which -- objection.	12:14:37 19	A. Yes.
12:12:30 20	Compound. Which term do you want to use?	12:14:54 20	Q. So you said most drivers won't see a sign
12:12:36 21	MS. BRILL: Yeah. Let -- let me go back.	12:14:56 21	if it's outside of the 15-degree cone, correct?
12:12:38 22	Thank you for the clarification.	12:15:03 22	A. Yeah, I think, you know, the word "most"
12:12:39 23	Q. Are you aware of any studies that support	12:15:04 23	probably has to be -- have a few asterisks after it.
12:12:41 24	the notion that the yardstick that you chose	12:15:08 24	More drivers -- more drivers will see a sign if it's
12:12:43 25	correlates with traffic safety?	12:15:10 25	within the 15-degree cone. And where the 50th
90		92	
12:12:48 1	A. No. And I -- and I didn't choose that	12:15:13 1	percentile line is, half the drivers will see it and
12:12:50 2	yardstick for that reason. It was just defining	12:15:17 2	half the -- half the drivers will not see a sign,
12:12:53 3	when -- when something is seen by the eye is how	12:15:21 3	you know, depending on the cone angle, I don't know
12:12:56 4	I -- that's why I used the 15 degrees.	12:15:23 4	where that angle is. Maybe 20 degrees, maybe 12
12:12:58 5	Q. Okay. And something can be -- something	12:15:26 5	degrees. I don't know. But clearly more drivers
12:13:01 6	outside of the 15 degrees can be seen by the eye if	12:15:30 6	look at a sign if it's -- if it's closer to the
12:13:04 7	the driver turns his or her head, correct?	12:15:32 7	center of their vision than if it's off to the side.
12:13:04 8	A. Yes.	12:15:36 8	Q. But -- but that -- that -- looking, seeing
12:13:07 9	Q. Okay. And that's more distracting than if	12:15:37 9	the sign within the 15-foot {sic} cone within
12:13:10 10	the same object is seen within the 15-degree cone,	12:15:40 10	traffic engineering is not unsafe, correct?
12:13:10 11	correct?	12:15:44 11	A. Yes, I would say that's correct.
12:13:14 12	MR. MOBLEY: Objection. Incomplete	12:15:46 12	15 degrees, not 15 feet.
12:13:17 13	hypothetical.	12:15:48 13	Q. Oh, I'm sorry, 15 degrees. Thank you.
12:13:17 14	THE WITNESS: I would say no. That -- that	12:15:50 14	A. Yes.
12:13:21 15	is not necessarily true. I don't think it's true.	12:15:50 15	Q. And seeing it outside the 15 degrees can be
12:13:24 16	I think it's just less likely to be seen for a	12:15:52 16	unsafe, correct?
12:13:27 17	driver, any given particular driver or any	12:15:53 17	A. I would say in the case with a sign, no.
12:13:29 18	particular driver to -- to look and see it.	12:15:56 18	People just -- they're not going to see the sign.
12:13:29 19	BY MS. BRILL:	12:15:59 19	They just would miss the sign. They wouldn't enjoy
12:13:32 20	Q. Is there -- I'm sorry. Did you --	12:16:02 20	the benefits of seeing the sign. It would be more
12:13:34 21	A. If -- if -- if the sign is way off to the	12:16:05 21	of it than -- than everybody is going to read every
12:13:36 22	side and can hardly be seen without turning your	12:16:08 22	sign, and even if they've got to squint and it's --
12:13:39 23	head to -- to see it, probably isn't noticed by most	12:16:10 23	they look at 45 degrees, I don't think that's the
12:13:43 24	drivers.	12:16:12 24	way we operate. We just -- that -- I don't think
12:13:43 25	Q. Is there any data on that?	12:16:15 25	it's more unsafe if it's out. They just don't see
91		93	